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Volume X
TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 38

NATIONAL LABOR RELATIONS BOARD, PETITIONER

VS.

**DONNELLY GARMENT COMPANY, DONNELLY GAR-
MENT WORKERS' UNION AND INTERNATIONAL
LADIES' GARMENT WORKERS' UNION**

No. 39

**INTERNATIONAL LADIES' GARMENT WORKERS'
UNION, PETITIONER**

VS.

**DONNELLY GARMENT COMPANY, DONNELLY GAR-
MENT WORKERS' UNION AND NATIONAL LABOR
RELATIONS BOARD**

**ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE EIGHTH CIRCUIT**

**PETITIONS FOR CERTIORARI FILED JANUARY 29, 1946
CERTIORARI GRANTED APRIL 22, 1946**

**VOLUME X.
RECORD.**

**United States Circuit Court of Appeals
EIGHTH CIRCUIT.**

No. 12,641

**DONNELLY GARMENT COMPANY, A CORPORA-
TION; PETITIONER,**

vs.

**NATIONAL LABOR RELATIONS BOARD,
RESPONDENT.**

**DONNELLY GARMENT WORKERS' UNION,
INTERVENER.**

**INTERNATIONAL LADIES' GARMENT WORKERS',
UNION, INTERVENER.**

**ON PETITION FOR REVIEW OF ORDER OF NATIONAL LABOR
RELATIONS BOARD:**

FILED AUGUST 5, 1943.

Testimony and Exhibits in Case No. 12,641.

United States Circuit Court of Appeals
EIGHTH CIRCUIT.

No. 12,641

DONNELLY GARMENT COMPANY, A CORPORATION,
PETITIONER,

vs.

NATIONAL LABOR RELATIONS BOARD,
RESPONDENT.

DONNELLY GARMENT WORKERS' UNION,
INTERVENER.

INTERNATIONAL LADIES' GARMENT WORKERS'
UNION, INTERVENER.

ON PETITION FOR REVIEW OF ORDER OF NATIONAL LABOR
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[fol. 6189] By Miss Weyand:

Q. Where was your machine located at the time of the Sylvia Hull incident?

A. I was working in 415 on the eighth floor. That section was the first section as you come in the door, the first section that you come to, and I was about the third or fourth machine, something like that, from the end of the table. That was the east end of the building, across the table; I faced the door, I was facing north.

Q. Did you consider your instructors as supervisors?

A. Absolutely.

[fol. 6190] Mr. Ingraham: Now—

Miss Weyand (Interrupting): Why?

Trial Examiner Batten: Just a moment?

Mr. Ingraham: Now, I move to strike the answer out as not proper rebuttal.

Trial Examiner Batten: Well, the answer may be stricken. While you make your objection—I assume you had one?

Mr. Ingraham: Yes. I object to the question on the ground that it is not proper rebuttal.

Trial Examiner Batten: You may answer.

Mr. Lane: The intervenor makes the same objection.

Trial Examiner Batten: You may answer.

A. Absolutely, I regarded her as being my supervisor.

Miss Weyand: Why?

Mr. Ingraham: May I have a continuing objection?

Trial Examiner Batten: Yes. Well, I think there is already a continuing objection on this witness.

Mr. Ingraham: Well, if not, I want a continuing objection.

Miss Weyand: Why did you consider your instructor to be a supervisor?

[fol. 6191] A. Well, the instructor—everything that we—like changing a price on a ticket or anything like that, it had to be O. K. ed by the instructor. The instructor always gave us our checks or had our checks brought to the section, and she would pass the checks around from girl to girl, and more than one time when I was unable to be at work, I would call, and I have talked to Mrs. Dorsey myself when I was working for her, I notified her that I wouldn't be able to be at work that day.

She was in full charge of the section, the girls looked to her for everything in regard to work or anything that they might be in doubt about; it was always the instructor you went to about the work.

Q. Did the instructors determine whether to divide the work, and lay off girls when the work was slack?

A. Yes, they did.

Q. Do you know of any instance of that?

A. Yes, I know that I have been sent home by the instructor whenever there was a lack of work in the section, and the instructor could—she distributed work the way she wanted to. If we had four or five different embroidery numbers in the line, and maybe there would be a few bundles in the number, that had different styles of dresses, maybe one of one price and one another price, maybe she could give that to one girl—

[fol. 6192] Miss Weyand: By dividing the work I mean whether it was distributed among all the girls in the section, or just given to some of the girls, part of them, and the rest go home.

Trial Examiner Batten: Do you understand the question?

A. Yes, I understand the question.

Trial Examiner Batten: You may answer it.

A. Well, they could do that. If there was just a small amount of work, just a few bundles, they could give that to one or two girls and send two or three girls home.

By Miss Weyand:

Q. Have you ever been sent home? A. Yes.

Q. Who was the instructor that sent you home, any incident?

A. Well, I don't remember. I have been sent home for [fol. 6193] the lack of embroidery work when Mrs. Dorsey was my instructor.

Q. Do instructors ever have girls transferred into or out of their sections?

A. Yes, to the extent that if they run out of work, like the special section, if they run out of work and have no work for the girls, they can be sent to Mrs. Hyde and then taken to another section.

Q. And who determines whether the girls are sent to Mrs. Hyde? A. The instructor.

Miss Weyand: I ask that this be marked as Board's exhibit-No. 38 for identification.

(Thereupon the document above referred to was marked as "Board's Exhibit No. 38, Witness Copenhagen," for identification.)

Do you want to look at this, Mr. Trial Examiner? I was just explaining I want to use it for the form only.

By Miss Weyand:

Q. Mrs. Copenhagen, I would like to have you look at Board's exhibit 38 for identification, and tell me what that slip was used for.

A. Well, this is the kind of a slip that was given you by Mrs. Hyde, or whoever took care of you when you went down to the office, when you were transferred from one department to another. The department that you were going from was put on here, and the department that you were going to, and the [the] time that you left your original department and the time that you went into the other [fol. 6194] section was marked on here, and then this was to be O. K.ed by your instructor.

Q. Does the slip I hand you contain the initials of an instructor? A. It is signed by—

Mr. Ingraham: (Interrupting) Just a minute, please. I understood Miss Weyand to say she was submitting this just as to form and not anything—

Miss Weyand: Not to prove any facts of the transfer. I would like to use it as an illustration to show where the instructor signed on the slip.

A. Now, this is signed—

Trial Examiner Batten: Wait just a moment.

Mr. Ingraham: I object to this witness testifying that it is signed by the instructor or anybody else. It speaks for itself.

Trial Examiner Batten: Well, she will testify, if she knows, who signed it or initialed it:

A. The instructor signed it.

Trial Examiner Batten: Well, did you see her sign this one?

A. I don't remember about this one special one, but I have certainly seen them signed, a lot of them.

Miss Weyand: Do you know whose initials are on that?

[fol. 6195] A. This is C. F. I can't be certain who it was, however, I do know an instructor whom it might be.

By Trial Examiner Batten:

Q. You don't know who put the initials on there?

A. No, I couldn't testify to it.

Q. You didn't see them put on there?

A. I may have, but I wouldn't be certain of that.

By Miss Weyand:

Q. That was a slip that was used when you were transferred from one section—

A. (Interrupting) To another?

Q. Yes. A. Yes.

Q. And it was used continuously before July, 1939, at the time you were transferred?

A. To the best of my knowledge they used this slip.

Q. Now, did the check you received show the section you worked in when you were transferred, or the one you were transferred into?

A. The check showed the section you were working in. If I was working in section 415 one week, and if I was in another section another week, and received another check, it would still have 415 on it.

Miss Weyand: I offer this in evidence, for the purpose previously stated.

Trial Examiner Batten: You mean merely for the purpose [fol. 6196] of showing it is a slip that was used in effecting a transfer:

Miss Weyand: And to illustrate the method and procedure used in making a transfer from one section to another, and the instructor's duties in that regard.

Trial Examiner Batten: Well, of course—

Mr. Lane: (Interrupting) I object to it for the latter reason.

Trial Examiner Batten: This doesn't show anything about an instructor.

Miss Weyand: It is just an illustration of the type of slip the company prepared, which the instructor regularly approves, as the young lady said, when she goes to a certain section; she says it is approved by the instructor of the section she is transferred to.

Trial Examiner Batten: There is no testimony here that those initials are an instructor's initials.

Miss Weyand: She said usually they sent those around—there is an instructor down there, and these initials coincide with her handwriting in another exhibit I have. I am not offering to prove that, but I am offering this as a form the company used, and which instructors usually approved.

Mr. Langsdale: The testimony is, further, that this is the form that was always used, and she had seen many of them just like this, and had them herself.

Trial Examiner Batten: Well, it will be received as to [fol. 6197] form. This witness testified it was used to effect a transfer.

(The document heretofore marked "Board's Exhibit No. 38, Witness Copenhagen," for identification, was received in evidence.)

By Miss Weyand:

Q. When the instructor signs on this, what line does she usually put her name on, or initials on?

A. Right on the bottom line, right there (indicating).

Q. Following the words "Approved by"?

A. Yes.

Q. And that is the instructor, not in your permanent section, but in the section you are temporarily working in?

A. Yes.

Q. Do instructors eat in the cafeteria with the other girls? A. They eat—

Mr. Ingraham: (Interrupting) Now, I object to that question for the reason it is immaterial to any issue in this case, and it is not proper rebuttal.

Mr. Hogsett: If I may supplement by this suggestion, that illustrates the thin character of this Board's case, that they would have to rely on the fact that domination could be shown by an instructor eating in the same cafeteria. Now, that is getting down to pretty thin stuff, I submit, and the subject matter is wholly immaterial.

Miss Weyand: I don't offer to prove they eat in the [fol. 6198] same cafeteria. That isn't the purpose of this question.

Mr. Hogsett: Well, it is in the same field, the same atmosphere.

Trial Examiner Batten: You may answer the question.

Mr. Lane: The intervenor makes the same objection, it is not rebuttal.

Trial Examiner Batten: The same ruling.

A. There is one cafeteria I know of in the building. There is a room in the back of the building, a little, small room, closed off to itself, and that is where the instructors eat their lunches.

By Miss Weyand:

Q. Who else eats in that room?

A. Well, Cecile Ealy and all the instructors.

Q. Anyone in addition to the instructors eat there?

A. The thread girls, I believe, eat in there.

Q. Does Mr. Baty eat in there?

A. Yes, I have seen Mr. Baty go in.

Q. Does Lena Tyhurst eat in there? A. Yes.

Q. Did Mrs. Wherry, when she was working for the company? A. Yes.

Q. Did any of the operators eat in there? A. No.

Q. Did Rose Todd ever make out one of those tickets for time for you?

[fol. 6199] A. I remember of one time that I worked up in the designing room on some work that I understood was for Miss Baty, it was bridge sets or lunch cloths and table cloths and napkins, it was embroidery work; and Rose Todd made out my time ticket to be turned in for my pay for that.

Q. Who requested you to do that work?

A. I don't remember who came down and got me and took me up there to do that.

Trial Examiner Batten: You say "time ticket". What do you mean?

A. Well, like if I was up there an hour or an hour and a half, well, then, I had to be paid for that time.

Trial Examiner Batten: You don't mean one of those slips, these transfer slips, do you?

A. Well, I don't know as it was the same form, but it was a ticket like that. I don't remember exactly whether it was exactly that same identical ticket but it was another one similar to that, but it was a ticket that you turned in as to how much time you spent up there, and you were paid for that time.

B. Miss Weyand:

Q. What is an i. d. m.?

A. Well, it is a little note that might come from Mr. Baty or anyone that they want to get to the girls. It usually has "i. d. m." at the top of it, and they are usually brought to the sections by the basket boy, they call them, and the [fol. 6200] instructor passes it around through the section.

Q. When you say "anyone that they want to get to the girls," whom do you mean by "they"?

A. Well, if Mr. Baty wanted the girls to know something, in regard to the work, or there was too much talking going on in the plant, why, he may write that on an i. d. m., or have it written on there and sign his name on it, and it would be brought around to the different sections.

Cross-Examination

By Mr. Ingraham:

Q. When did you say you left the employ of the company? A. You mean the last time?

Q. Yes, the last time.

A. It was in 1939, and if I am not wrong about the month, it was sometime during the month of August, but I know that it was in 1939.

Q. Now, had you been sick prior to that time?

A. Prior to the time when I left the company?

Q. Yes.

[fol. 6201] A. That was my reason for leaving.

Q. Well, had you drawn 12 weeks of insurance?

A. I did.

Q. Now, how long had you been off at that time?

A. You mean —

Q. (Interrupting) In 1939.

A. When I drew my insurance?

Q. Yes.

A. Well, you had to be off a certain length of time before you could draw insurance. I don't remember just exactly what the length of time was.

Q. Now, since you have left the employ of the company have you been employed?

A. Yes.

Q. Where?

A. At Brooke Wholesale Embroidery.

[fol. 6202] Q. And what work do you do there?

A. I don't work there now.

Q. Well, when you did work there?

A. My last job was as instructor.

Q. How soon after you left the employ of the Donnelly Garment Company did you go to work for this concern?

A. I left Donnelly's in — as I say, I believe it was in August of 1939, and I went to work for the Brooke Embroidery two days before Christmas — let's see. Well, it was a year from the following Christmas — let's see. That would have been 1940; it was two days before Christmas in the year of 1940.

Q. And what work did you do when you started in with that concern?

A. The Brooke Embroidery?

Q. Yes.

A. I ran embroidery machines.

Q. And how long was it before you were made instructor?

A. Well — let me see. It was in October of the next year. I quit there ~~this~~ last summer — this summer, it was the middle of this summer, and I went to work there — I mean I was an instructor about the first of this year until [fol. 6203] I quit.

By Mr. Ingraham:

Q. Did you join the I. L. G. W. U.?

A. You mean the International Ladies' Garment Workers' Union?

Q. Yes.

A. No, I never belonged to any other union but the Donnelly Garment Workers' Union.

Q. Now, do you recall in June of 1939, signing an affidavit under oath with respect to the formation of the Donnelly Garment Workers' Union?

A. June?

Q. Yes.

A. Of 1939?

Q. Yes.

A. Under oath?

Q. Yes.

A. Yes, I do.

Q. I will hand you intervenor's exhibit 20, and refer you to page 6077, and ask you if that is your signature.

A. Yes, that is my signature.

[fol. 6204] By Mr. Ingraham:

Q. Now, I will ask you to read this petition, and state if you recall signing that affidavit.

By Mr. Ingraham:

Q. This affidavit states each signer hereby further states that he or she has either —

Mr. Langsdale: (Interrupting) Just a moment. I object for the reason the affidavit is the best evidence of its contents.

Trial Examiner Batten: You may proceed.

By Mr. Ingraham:

Q. (Reading) "That he or she has either read or had read to him or her the contents of this affidavit." Do you recall having read this affidavit?

A. As I remember that affidavit, it was read to us in groups of a few girls at a time.

Q. But it was read to you?

A. Yes.

Q. Now, was the affidavit that you made at that time, was that true or false?

Mr. Langsdale: Let her see it. She hasn't read the affidavit yet.

Mr. Ingraham: She read it.

Trial Examiner Batten: Yes, she read it.

[fol. 6205] A. I don't understand what you mean.

By Trial Examiner Batten:

Q. Well, was that affidavit correct when it was read to you?

A. Well it is correct to the extent they weren't standing over me, threatening my life, or anything like that.

Q. That isn't the question. The question is: Are the facts stated in the affidavit you signed at that time correct? That is the question to you.

A. You mean to point out that I signed it of my own free will?

Q. Yes.

Mr. Ingraham: No.

Mr. Hogsett: True or false.

Miss Weyand: The contents of the affidavit itself had to do with her joining the Donnelly Garment Workers' Union.

Trial Examiner Batten: Just a moment. You proceed, Mr. Ingraham. I was going to try to simplify it, but I guess I complicated it.

By Mr. Ingraham:

Q. You swore, when you signed this affidavit, that the things mentioned — you just read these matters that are contained in the affidavit — that they were true.

[fol. 6206] Trial Examiner Batten: Do you understand the question, Miss Witness?

A. I am afraid I don't.

By Trial Examiner Batten:

Q. Well, this affidavit was read to you?

A. Yes.

Q. After it was read to you, you signed it, did you not?

A. Yes.

Q. Now, the statements in there, were they true and correct at the time you signed the affidavit?

By Trial Examiner Batten:

Q. Do you recall what is in the affidavit? You just read it.

A. Well, to the best of my memory, in the affidavit —

[fol. 6207] Q. No, I am asking you if you remember what was in it. You just read it.

A. Well, maybe I didn't understand it. That is the point I mean, maybe I didn't understand what that covers.

Q. Well, you take it then and read it again.

A. Well, as I understand it, I signed this affidavit to the effect that I joined the Donnelly Garment Workers' Union of my own free will?

By Mr. Ingraham:

Q. Well, the affidavit contains all the statements that you swore to.

A. What I mean by that, I don't know — I don't know whether this refers to whether I was forced into the Donnelly Garment Workers' Union or if I just signed a card because I wasn't forced to.

Q. Yes, that is one of the things in the affidavit. The affidavit is very plain and simple. You have just read it now, and I want you to state whether or not it was true or false.

Mr. Langsdale: I don't think the witness should be required to state that the whole affidavit was either true or false.

Mr. Reed: I think that is manifestly an improper suggestion.

[fol. 6208] Trial Examiner Batten: I think the question is proper to the witness, when she gets through reading it again.

A. Well, I still don't know just exactly how I should answer that question.

By Trial Examiner Batten:

Q. Well, you are the one that is answering the questions, Miss Witness.

A. If I can express myself the way I felt about that when I signed it; it seems to me there are so many questions in there, that that covers, that maybe wouldn't apply all the way through; one answer wouldn't apply to it.

Q. Well then, are there parts in there that you don't consider to be true?

A. No, not necessarily that, but he asked me if I considered that complete statement to be true or false.

Q. Well, do you consider there are parts of it that are true and parts of it that are false?

A. No; but as I read that, the way I understand it, that we signed that as more or less of a petition to prove that [fol. 6209] we had joined the Donnelly Garment Workers' Union under our own free will.

Q. Well, that part of the affidavit, then, you consider true, is that right?

A. To the extent that I wasn't threatened in any way, or forced by any means into signing a card or signing my name into the union — to join the Donnelly Garment Workers' Union.

Trial Examiner Batten: Well now, what is the next part there, Mr. Ingraham? Or do you care to proceed in that manner?

Mr. Ingraham: Yes, that's right.

By Mr. Ingraham:

Q. Let me read it then: "We, the undersigned employees of the Donnelly Garment Company and the Donnelly Garment Sales Company, of Kansas City, Missouri, below the rank of officer or any position carrying with it the right to hire or discharge, again reassert under oath that it is our free, voluntary and considered wish and choice to belong to the Donnelly Garment Workers' Union and not to the International Ladies' Garment Workers' Union or any other union." Is that true or false?

[fol. 6210] Trial Examiner Batten: Just a moment, Miss Witness. Do you understand the part Mr. Ingraham just read?

A. Yes, I understand it.

By Trial Examiner Batten:

Q. Well, was that true or false, that you joined it of your own free will?

A. But my point is this, the impression I got of that, when I signed it, was that I was signing a card to join the union. They didn't force me in any way by threats — the company never intimidated me one way or the other, they never told me that if I didn't join the union I would be fired; and when I signed that, that was the impression I got of it.

Q. Well, then, with that interpretation on that sentence, it is true, is that right, as you have explained it?

A. Well, if I am making myself clear, I guess that is right. It is kind of hard to express yourself. I know how I felt about it. Maybe I didn't understand it when it was read to me, but that was the impression I got from it, that we were signing that card — that we had signed the card to join the Donnelly Garment Workers' Union, that we [fol. 6211] weren't forced to sign it in any way. Now, that was the impression I got of it when I signed it.

Mr. Ingraham: Now, was that sentence I have read true or false?

Mr. Langsdale: I object to that as repetition.

Trial Examiner Batten: Well, I think it is. The witness has answered it and explained it in her way, and I

don't think, Mr. Ingraham, that you, no matter how many times you ask the question, "Is it true or false," you will get any other answer.

Mr. Reed: Well, let's see.

Trial Examiner Batten: Well, that is about the third or fourth time. You may ask again, Mr. Ingraham.

Mr. Ingraham: I want you to read that first sentence, it is a very plain and simple sentence, and state whether or not that is true or false.

Mr. Langsdale: Now, I object to that question as it confounds a "yes" or "no" answer, when the witness says she can't give a "yes" or "no" answer, but gives her explanation for it.

Trial Examiner Batten: Well, she may read it again.

A. Well, I am sorry. That is just about the best answer I can give you, because I really and sincerely—that is the truth. Maybe I didn't understand it, I am not saying that I did. Maybe I didn't just see through it, but [fol. 6212] when I signed it that was really what I got from it, when it was read to me.

Mr. Ingraham: What did you get from it?

Trial Examiner Batten: Just a moment.

Trial Examiner Batten: In other words, Miss Witness, you have no other answer than you gave once or twice?

A. No, that is the best I can do.

Mr. Ingraham: Are you now stating that that sentence that I have read was not true?

Mr. Langsdale: I object to that as repetition. It is certainly the same question in another form.

Trial Examiner Batten: You may answer.

A. Well, I don't—I wouldn't say it was true or untrue, because right now you have convinced me that maybe I didn't understand that when it was read to me.

Mr. Ingraham: No, I haven't convinced you of anything.

Mr. Langsdale: I object to that as argumentative, and ask it be stricken out.

Mr. Ingraham: Well, it is responsive.

Trial Examiner Batten: Well, it may stand. It is not a question.

Mr. Langsdale: Of course, it is responsive to the witness.

Trial Examiner Batten: Now, will you read the answer [fol. 6213] thus far, of the witness?

(Thereupon the last answer was read by the reporter, as follows:

"A. Well, I don't—I wouldn't say it was true or untrue, because right now you have convinced me that maybe I didn't understand that when it was read to me.")

Mr. Ingraham: Now, I want you to take that affidavit and point out what fact is contained in that affidavit that you swore to at the time, that now you testify was untrue.

Mr. Langsdale: Just a moment.

A. (Interrupting) I haven't testified it was untrue.

Trial Examiner Batten: Just a moment, Miss Witness.

Mr. Langsdale: Well, I object to the question as repetition, for that includes the sentence that has just been read and inquired about six times and answered six times.

Trial Examiner Batten: Well, I think, as far as that first sentence is concerned, you'd better proceed to the next part of it, Mr. Ingraham.

Mr. Ingraham: I want her to point out anything in that affidavit that was sworn to under oath that is untrue.

Mr. Langsdale: And I object to "sworn to under oath," it doesn't make any difference whether it was sworn to under oath or not, the question is was it true.

Mr. Ingraham: Well, I want her—

Trial Examiner Batten: Both of you, please, just a [fol. 6214] moment. Will you read that question—tell us if there is anything in that that you consider to be untrue?

Mr. Ingraham: I suppose a false affidavit you consider to be untrue.

Mr. Langsdale: You had hundreds of them down there.

Trial Examiner Batten: Both of you, let's proceed with this hearing.

A. Now, what is it you want me to read?

Mr. Ingraham: I want you to point out any fact of anything in that affidavit that you now are willing to testify is untrue.

Mr. Langsdale: Now, as I understand the Examiner's ruling, that doesn't include the sentence that has been gone over.

Trial Examiner Batten: She may read the entire matter and tell us if there is anything in there she considers to be untrue at the time she signed it.

[fol. 6215] (Thereupon the affidavit above referred to was read by the witness.)

A. Well, I wouldn't say there was anything in there that was untrue to the way that I understood this when it was read to me.

By Mr. Ingraham:

Q. Well, it isn't hard to understand, is it?

A. Well, maybe I'm dense, but—

Q. Is it hard to understand?

A. I do think it is worded in a little bit complicated way, yes.

Q. What is hard to understand about it?

A. Well, I don't know—in general. But I don't seem to have the same impression of this as you do.

Q. What impression do you have?

A. Just like I said before in my answer.

Trial Examiner Batten: Now, I think she has testified to that several times, Mr. Ingraham.

Mr. Ingraham: Well, it is a very plain, clear statement. I can't understand why the witness quibbles about it.

Trial Examiner Batten: Well, that isn't the first thing in this hearing we have had that probably was plain but was explained by witnesses. Now, it is obvious that the witness will not definitely say Yes or No on this document, and I will not require her to say it.

[fol. 6216] Mr. Ingraham: All right, Let me ask this witness—

First, I offer page 6077 of intervenor's exhibit No. 20 (rejected) as a part of the cross-examination.

Miss Weyand: I object to it as not containing anything inconsistent with her testimony, on the grounds I have previously objected to the offer of this exhibit.

Trial Examiner Batten: It will be received on the same basis as the other pages.

Mr. Ingraham, has anything been done with reference to photostating those pages?

Mr. Ingraham: Not yet.

Trial Examiner Batten: I believe this is three of them, isn't it?

Mr. Ingraham: Yes.

Mr. Ingraham: I believe you testified yesterday this:—

Miss Weyand: The page number, please.

Mr. Ingraham: 6172.

By Mr. Ingraham:

Q. Miss Weyand was asking you about the April 27 meeting. Do you know what meeting that was?

A. Was that the first meeting, where the Donnelly Garment Workers' Union was—where we signed the cards, or had that right?

Q. It was the meeting where the union was formed.

A. Where it was formed, and we signed cards and joined?

[fol. 6217] Q. (Reading from transcript.)

“Q. Why did you sign the card?

“A. Well, I felt like I'd better, if I wanted my job. That was the impression I got from it. I needed my job

and needed it badly, and I got the impression that if I didn't, I wouldn't have a job very long."

A. That's right, I testified to that.

Q. Did you join the Donnelly Garment Workers' Union of your own free will?

A. Well, I joined it of my own free will to the extent of this, I was never threatened or told if I didn't join the union I would be fired, or anything of the kind, by the company, or anybody who had any authority down there. But it was just clear in my own mind that if I didn't belong to the union I wouldn't have a job there very long, and I still feel that way about it.

Q. So, then, when you made this affidavit that you joined the Donnelly Garment Workers' Union—when you made this affidavit under oath, "It is our free, voluntary and considered wish and choice to belong to the Donnelly Garment Workers' Union," that wasn't true?

Mr. Langsdale: I object to that as repetition.

Trial Examiner Batten: You may answer.

A. No, I don't understand it that way. When I signed that [fol. 6218] petition right there, as I understood that, the way I took it, I wasn't forced, by any means at all, to sign the union card, but in my own mind I felt just as sure that if I didn't do that I wouldn't have a job.

Mr. Ingraham: So, at the time in 1939 when you made this affidavit under oath you felt that it wasn't a voluntary act, that you wouldn't have a job unless you did join the Donnelly Garment Workers' Union; and, yet, you stated in this affidavit that it was your voluntary act?

Mr. Langsdale: Just a moment. I object to the question as, not a double-barreled one, but a about a quadruple-barreled one, and for the further reason that it is argumentative and, also, repetition.

Trial Examiner Batten: I think it is argumentative.

Mr. Ingraham: Did you sustain the objection?

Trial Examiner Batten: Yes. I think it is argumentative.

By Mr. Ingraham:

Q. Now, Miss Witness, you know what the word "voluntary" means, don't you? A. Yes, I do.

Q. And you know what "free act" means?

A. Well, I think I do.

Q. Now, do you want to tell this Examiner that you can't understand what the language "It is our free, voluntary and considered wish and choice to belong to the Don- [fol. 6219] nelly Garment Workers' Union"—that you don't know what that means?

Mr. Langsdale: Just a minute. I object to that question as not based on her testimony, for she said she knew what "voluntary" meant and what "free act" meant.

Mr. Ingraham: All right,—

Mr. Langsdale: Just a minute.

Are you going to withdraw the question?

Mr. Ingraham: No.

Mr. Langsdale: The question now involves other matters which have already been answered, and I object to it as repetitious.

Trial Examiner Batten: I think it is repetitious. However, I may be mistaken, but it seems to me that this is the question to the witness, Mr. Ingraham:—

If it isn't, say so. What distinction does she make between signing the card as a voluntary act and signing this affidavit as her voluntary act?

Mr. Ingraham: That isn't my question.

Trial Examiner Batten: Then, you state your question.

Mr. Ingraham: She says she understands what these words mean.

Mr. Ingraham: Now, I want you to state what you understand "free" and "voluntary" mean.

Mr. Langsdale: I object to that as not a proper question, unless it is used in connection with the other words they [fol. 6220] are used with in this affidavit. She says she knows what "voluntary" means and what "free act" means, and she has said what she understood them to mean.

in their context with these other words, which makes it repetition, and I object to it.

The Witness: What is it you want me to explain?

Trial Examiner Batten: Will you read the question, please?

(Thereupon the last question was read by the reporter, as follows:

"Now, I want you to state what you understand 'free' and 'voluntary' mean.")

A. Well, I'd say that "free" meant you were not bound in any way to anything—that you were not bound in any way or obligated. And "voluntary" would mean you did it because you wanted to, I suppose. That would be as near as I could— Well, that you were not forced.

Mr. Ingraham: Now, don't you understand, then, that that meant that you were free to join the Donnelly Garment Workers' Union and—

Mr. Langsdale: Just a moment.

Q. (Continuing) —without regard to anything that anybody had threatened, or that you thought might be threatening, to prevent you from joining?

Mr. Langsdale: I object to the question as repetition. [fol. 6221] Now, she has gone over all of those matters and stated what she understood by those words as contained in the context of the affidavit.

Trial Examiner Batten: Do you understand the question?

The Witness: No.

Trial Examiner Batten: Will you restate it, Mr. Ingraham?

Mr. Ingraham: When you joined the Donnelly Garment Workers' Union, was that your free and voluntary act?

Mr. Langsdale: Just a moment. I object to that as repetition. That is the sentence that they have been interrogating her about now for forty minutes, and she has answered it many times.

Trial Examiner Batten: She may answer.

A. You mean, the day I signed the card, did I do that—

Mr. Ingraham: Yes.

A. I signed that card because, as I said yesterday,—

Mr. Ingraham: Now, just a minute. I want my question answered, and then she may explain.

Trial Examiner Batten: Will you read the question to the witness, please?

Mr. Langsdale: I object to the interruption. Her answer as it was coming out was certainly responsive and proper.

Trial Examiner Batten: Will you read the question?

[fol. 6222] (Thereupon the last question was read by the reporter, as follows:—

“When you joined the Donnelly Garment Workers’ Union, was that your free and voluntary act?”)

Trial Examiner Batten: You may answer.

A. It was my free and voluntary act to the extent that I wasn’t threatened in any way to sign that card—forced in any way. They didn’t force me or threaten me, or anything, to make me join that union at any time.

Mr. Ingraham: Now, you stated yesterday—

Mr. Langsdale: What page are you going to read from?

Mr. Ingraham: 6172.

Q. (Continuing) “Q. Could you state why you had that impression?”

That referred to the part I just read, being “I got the impression that if I didn’t, I wouldn’t have my job very long.”

Then, the next question:

“Could you state why you had that impression?”

“A. I didn’t know anybody that didn’t sign one, and I didn’t know anybody that didn’t belong to it after it was formed.”

Then, the answer goes on:

"I remember of one meeting—I don't know which one—where it was brought up in the meeting—someone asked [fol. 6223] if new employees coming into the plant would have a chance to join the union, and they said, yes, they did. And it went on in the conversation, if the new employee had any doubt as to whether they wanted to join the union, there would be a doubt in their mind as to whether they wanted to work for the company."

Do you remember making that answer yesterday?

A. I do.

Q. Now, did you consider at the time you joined this union that if new people came to work in the plant and they didn't want to join the union, there would be doubt in their minds as to whether they wanted to work for the company?

A. No, I didn't.

Q. When did this meeting take place?

A. Which meeting?

Q. You stated that at a meeting that was said, that if new employees—

A. I don't remember which meeting that occurred in. I do remember of that statement being made, but I couldn't tell you—We went to so many union meetings that I have no idea which meeting that occurred in.

Q. How many meetings did you have a week?

A. Oh, I don't know how many meetings we had, but it seems to me like we were having meetings all the time, just one right after the other.

[fol. 6224] Q. Every two or three weeks?

A. I wouldn't designate how many we had.

Q. Approximately how many a week?

A. I couldn't say.

Q. How many a month?

A. At first, it seemed to me, they had— Now, this is just my own recollection—my own idea about it; I'm not certain. It seems to me we had three or four a month.

Q. At least three or four a month?

A. Yes, I'd say that.

Q. Now, will you state what occurred at the meeting at which the Donnelly Garment Workers' Union was formed?

A. Well, as I remember, the meeting took place in the afternoon, and we went down to the meeting in our uni-

forms, Mr. Tyler was there and he talked to the employees, and that was when Rose Todd told us that we were going to sign cards—or they had cards there for us to sign, and they were passed out through the meeting and we kept them, and at the end of the meeting the cards were taken up—the boys that passed out the cards walked down the aisles and collected the cards from each row and took them back and turned them in. I remember that.

Q. Anything else?

A. Well, not that I recall right now.

Q. All right, now, the next meeting that you attended, [fol. 6225] when did that meeting take place?

A. I don't know as I could tell you that, because I don't remember the dates when they had the meetings.

Q. What occurred at the meeting?

A. I don't know what occurred. I can't specify what happened at this meeting and what happened at that meeting. I just can't—

Q. What happened at any meeting after this first meeting you referred to?

A. Usually Miss Rose Todd conducted the meeting and they talked about different union matters, and things of that kind.

Q. What were those matters?

A. You mean, what were the union matters?

Q. Yes.

A. In regard to the International Ladies' Garment Workers' Union and in regard to the Donnelly Garment Workers' Union. Those were their subjects.

Q. What was ever said—in substance, now? I am not asking you to quote anybody.

A. You mean at any of the meetings after the first meeting?

Q. Yes.

A. Just like I told you there, I remember very distinctly that one time about that being said about the new employees having a chance to—

Q. Have you read copies of the union meeting minutes?

[fol. 6226] A. Yes, I have.

Q. When did you read those?

A. Well, let's see. I read them last night.

Q. Where did you read them?

A. At Miss Weyand's—

Q. What minutes did you read?

A. Well, I couldn't tell you which ones I read. I just read some minutes. I don't know which ones they were, whether they were all of them, part of them, or of the first, second, or third—I don't know what they were.

Q. After reading the minutes last night, state what you recall took place at any union meetings, outside of what you referred to.

A. I would rather not depend on what I read in the minutes. I would rather tell you what I actually remember myself, without what I got out of the minutes I read.

Q. What do you remember, then?

A. Very little. Just like I said, I remember that instance— That just happened to impress me.

Q. Now, did you testify that you attended a meeting in March, a meeting of employees?

A. I don't know just what you mean now.

Q. Did the employees hold a meeting in the month of March, 1937?

Mr. Langsdale: Just a moment. I object to that as assum-[fol. 6227] ing that she said "employees." I don't think she said who held the meeting, except that there was a meeting in the plant.

Miss Weyand: I didn't ask her about the March meeting, I don't believe.

Trial Examiner Batten: The question to the witness was, was there a meeting of the employees in March; is that correct?

Mr. Ingraham: Yes.

By Mr. Ingraham:

Q. Do you recall strikes at the Gernes, Gordon, and Missouri plants? A. Yes, I do.

Q. Do you recall reading in the paper about those strikes? A. Yes, I do.

Q. Was there a general discussion among the employees at the Donnelly plant of the violence going on in those strikes?

A. Oh, you heard some girls talking about it.

Q. But there wasn't much talk?

A. Oh, it was discussed quite a bit, naturally.

Q. Were you of the opinion that there was going to be any violence at the Donnelly plant?

A. I never had the slightest bit of fear, in going in and out of the Donnelly plant—going back and forth to work, of being bothered by the union in any way. I was never approached—I drove my car back and forth every day and parked it there and I never saw anything in front of [fol. 6228] the Donnelly plant that might bother us.

Q. Did you ever hear that the Donnelly plant would be next?

A. I think there was something to that effect in the paper.

Q. Did you know what was going on at the Gernes, Gordon, and Missouri plants in the way of violence?

A. Only what I read in the papers and heard people tell. I didn't see it.

Q. Did you think there was any violence going on at these other plants?

A. I suppose there was. I didn't pay a whole lot of attention to it.

Q. Did you hear that the International strikers were beating employees at those plants?

A. Oh, I knew about what was going on up there, just from hearsay and what I read in the paper. I just read it in the papers.

Q. Did you ever hear that the strikers were pulling the employees' hair and tearing their clothes off?

A. Yes.

Q. And kicking them with razor blades?

A. I heard about them pulling their hair.

Q. And tearing their clothes off?

A. I did hear that.

Q. And that didn't bother you?

A. Well, if I had seen somebody out in front of Donnelly's that looked like they might do that, it might have, but there was never a picket or anything I saw in front of the Donnelly plant that would put any fear in me whatsoever, so those things didn't bother me.

Q. But you just testified you heard that the Donnelly plant was going to be next? A. Yes.

Q. So it wouldn't bother you to have your clothes stripped off in the public streets in Kansas City?

A. Yes, it would bother me to have my clothes stripped off in the streets, but I would have to see somebody out there to do it before I would get excited about it.

Q. You would have to wait until they were ready to do it before you would be bothered about it?

Mr. Langsdale: Just a moment. Now,—

A. Absolutely, I wasn't one bit frightened about that. I was in and out of there all of the time, and I drove my own car to work and parked it out in front every day.

Trial Examiner Batten: Mr. Langsdale, did you have something you wanted to say?

Mr. Langsdale: No. I think she is taking care of herself all right.

Mr. Ingraham: Yes, she has demonstrated what she thinks—

Mr. Langsdale: Just a moment.

The Witness: Isn't that what I am supposed to do when—

[fol. 6230] Trial Examiner Batten: Just a moment, Miss Witness, you just answer the questions that are asked of you.

By Mr. Ingraham:

Q. Now, Mrs. Copenhaver, did you hear any discussion among the Donnelly employees of what they could do to protect themselves?

A. Oh, not other than just what a few girls passed as their opinion.

Q. Who were the few girls?

A. Oh, I don't remember who they were—just girls who might happen to be going in and out of the building, and so forth.

Q. So there wasn't any such general discussion down there at all?

A. I don't remember whether there was or not. I can't remember. There were different girls we would go in and out of the plant with and we would discuss it among ourselves and talk about the things that might have gone on in these other plants.

Q. Did the employees ride in buses?

A. Yes, they did.

Q. For weeks and weeks?

A. I don't know how long.

Q. Did you? A. No, I didn't.

Q. Did the newspaper have articles about the strikes?

A. You mean, the strikes at the Missouri and those places?

[fol. 6231] Q. Yes.

A. I read articles about those strikes.

Q. Were there pictures in the papers?

A. I believe there was.

Q. Were there very many?

A. I don't remember about that.

Q. Did the articles describe any violence at the Gernes plant?

A. As I remember, they did, yes.

Q. Did the pictures show the violence?

A. I don't remember about that.

Q. But what you read didn't cause you to be afraid that the International was going to come down to the Donnelly plant and use the same violence?

Mr. Langsdale: I object to that as repetition. She has answered that several times.

Trial Examiner Batten: Will you read the question, please?

(Thereupon the last question was read by the reporter.)

Trial Examiner Batten: I think it is somewhat repetitious, but you may answer.

A. No, it didn't frighten me to the extent that I was afraid to go to work.

By Mr. Ingraham:

Q. I am not asking you if you were afraid to go to work.

[fol. 6232] A. Well, I didn't worry about it, thinking they might come down there some morning and meet us down there. That didn't worry me.

Q. You never thought they were going to do it; is that right?

A. I didn't know. I wouldn't say that. I didn't know whether they would or not.

Q. I hand you respondent's exhibit No. 16 and ask you if you saw that article or saw that edition of the Kansas City Times?

A. I believe I remember seeing those pictures.

Q. What did those pictures indicate to you?

A. Well, it looked like a pretty good fight in progress.

Q. But you wouldn't be afraid of any fight like that?

Mr. Langsdale: I object to that as argumentative and having been asked and answered—repetition.

Trial Examiner Batten: I think it is repetition.

Mr. Ingraham: I am referring to this article—that the article didn't cause her to be afraid of fights like that.

Mr. Langsdale: Just a moment. It is still repetition. He has asked her that question generally, specifically, and back and forth, and she has said she wasn't afraid of being in any fight, she drove her car up and parked it in front of the plant every day.

Mr. Ingraham: Did you sustain the objection?

[fol. 6233] Trial Examiner Batten: Yes, I sustain the objection.

Mr. Ingraham: I will hand you respondent's exhibit No. 20 and ask you if you saw that edition of the Kansas City Journal-Post, Monday, March 22, 1937?

Mr. Langsdale: What is that? Is that the Sylvia Hull article?

Mr. Ingraham: No.

Mr. Langsdale: The strike article?

Mr. Ingraham: "Violence Marks Garment Strike."

A. Well, I think I saw those pictures.

Mr. Ingraham: I am not referring to the pictures.

Trial Examiner Batten: Did you read that article?

A. Yes, I think I read it.

By Mr. Ingraham:

Q. What effect did that have on you?

A. Well, it didn't have any effect on me. I wasn't implicated in it. I didn't work up there. I didn't have to argue with them.

Q. But you have testified you had heard discussed that the International was coming next to the Donnelly plant and was going to use the same violence—

Mr. Langsdale: Just a moment.

I object to that. She hasn't testified to anything of the sort. She said she heard rumors that they might come down there next, but nothing about using violence, or "the same violence."

[fol. 6234] Mr. Hogsett: Do they use different types of violence?

Mr. Langsdale: They didn't use all of the violence you people claim they did.

By Trial Examiner Batten:

Q. Did you understand they were going to use the same methods down at the Donnelly plant as they had used at the other plants?

A. I heard that.

Q. You heard that from the other girls?

A. Just in general conversation.

Mr. Ingraham: Now, will you please read the question?

(Thereupon the last question was read by the reporter, as follows:

"But you have testified you had heard discussed that the International was coming next to the Donnelly plant and was going to use the same violence—")

Trial Examiner Batten: You may answer.

Mr. Ingraham: I believe she answered that question in—

Trial Examiner Batten: She answered it in answer to my question. I used the word "methods" instead of "violence." But I thought you still wanted an answer to your question.

Mr. Ingraham: Will you please answer that?

The Witness: What was the question?

Mr. Ingraham: Will you read it again, please?

(Thereupon the last question was reread by the reporter.)

A. Yes, I heard that.

[fol. 6235] By Mr. Ingraham: I hand you respondent's exhibit No. 29, which is an article in the Kansas City Star for March 25, 1937, and ask you if you read the article that is entitled "The Hair Pulling Grows."

(Thereupon the article referred to in the last question was read by the witness.)

The Witness: Now, you asked me if I read that?

Mr. Ingraham: Yes.

A. Yes, I read that.

Q. What effect did the reading of that article have on you?

A. Well, maybe I was hard to convince that they were going to come down there, but I still had no fear— I had to see somebody out there first, before it would have frightened me that they were going to do something to me.

Q. Now, did the same type of article appear for weeks and weeks in the papers?

A. There were several articles about that, as I remember.

Q. What do you mean by "several"?

A. Well, the papers had write-ups in them in the mornings, and sometimes in the evening paper.

Q. Every day?

A. I don't know as it was every day, but there were several articles I remember reading.

Q. Was that for three or four weeks?

A. I don't know how long it went on. It seems like it [fol. 6236] did go on for quite a little while.

Q. I will hand you respondent's exhibit No. 31, which is the Kansas City Journal-Post edition of April 5, 1937, with the streamer across the front page, "Twenty Women Strikers In Fight. New Fights Stir Action." Did you read that article?

[fol. 6237] A. Yes, I read that.

By Mr. Ingraham:

Q. Did you read that article?

A. Yes.

Q. What effect did the reading of that article have on you?

A. Well, it didn't have any particular effect on me, it didn't apply to me.

Q. I hand you respondent's exhibits 18 through 38 inclusive and ask you to state if you read the other articles that you have testified about.

Trial Examiner Batten: Well, let's see. She has testified on 20, 29 and 31, I believe.

Mr. Ingraham: I think that's right.

Trial Examiner Batten: Will you go through these articles, Miss Witness, and as you go through them tell us whether you read them or not, and give us the number that is on the page.

A. You want me to read each one of these?

Mr. Ingraham: Yes. Do you recall reading that article?

Trial Examiner Batten: You read it sufficiently so you can tell us whether you did read it at the time or not. If you have to read it all the way through, you do so; of course, if you don't it is unnecessary.

A. I believe I read this one.

By Trial Examiner Batten:

Q. What is the number of it?

A. Exhibit 18.

[fol. 6238] Q. Exhibit 18?

A. Yes. I think I remember reading this one too.

Q. What number is that?

A. Exhibit No. 19.

Q. And I believe you have testified before that you read 20, the next one, is that right.

A. Yes. I read most everything that was in the paper at the time.

Q. Well, you go through each one. The next one would be 21.

A. I believe I read this one too, Exhibit 21.

Q. 21?

A. Yes. The next one is 22.

Q. 22. You read that?

A. I read that. I don't remember definitely about this 23, I wouldn't be certain about that.

Q. 23?

A. Yes. I think I read 24.

I don't remember this.

Q. What one was that?

A. No. 25.

Q. 25?

A. I don't believe I read that one.

I don't remember about this 26, whether I read it or not.

Q. 26?

[fol. 6239] A. Yes.

By Trial Examiner Batten:

Q. Miss Witness, will you start again to read?

A. I believe I read this exhibit.

Q. Wait until Mr. Ingraham gets here. I think you left off at exhibit 31, did you not.

Miss Weyand: 26 is the last one.

Trial Examiner Batten: Oh, pardon me; 26.

By Trial Examiner Batten:

Q. Well, then, you start in with 27.

A. I believe I read this exhibit 27.

Q. 27?

A. Yes.

Trial Examiner Batten: While the witness is reading this next exhibit, I think it was Mr. Lane or Mr. Stottle called my attention to the fact that the 3—this doesn't concern you, Miss Witness—3 pages out of intervenor's exhibit 20, which was rejected, and are now received, aren't given new exhibit numbers, but simply identified as a cer-[fol. 6240] tain page number. Now, that appears to me to be satisfactory.

[fol. 6241] Trial Examiner Batten: The witness states that she has read 28—

A. (Interrupting) And 29.

Trial Examiner Batten: (Continuing) And 29.

A. I believe I read No: 30, too.

By Trial Examiner Batten:

Q. 30?

A. Yes.

Q. And 31, I believe you have already testified about that?

A. Yes, I have already testified to that.

I believe I read No. 32.

Q. 32?

A. Yes.

I don't remember whether I read No. 33 or not. I don't believe I read 34. I don't remember whether I read No. 35 or not. I don't remember about this 36.

Q. 36?

A. Yes. I don't remember whether I read that or not for sure.

I read No. 37.

Q. Was there some question about 38? I notice you looking at it.

Trial Examiner Batten: Mr. Ingraham, I think the witness has some question about it.

A. Is this what you wanted me to read and see whether I had read it or not?

[fol. 6242] By Mr. Ingraham:

Q. Yes. Do you recall reading that article?

A. No, I don't believe I do. I don't believe I recall reading that 38.

Is that all?

Q. Yes. What effect, if any, did the reading of these articles about the violence at the Gernes, Gordon, and Missouri plants have on you?

A. At that time, you mean?

Q. Yes.

A. Well, it didn't have any effect on me. I wasn't implicated in it, I didn't work there, and I didn't think a whole lot about it. I talked—I heard comments and discussed it, and things of that kind, like it said, the hair pulling.

Q. Were employees discussing the violence at those plants?

A. You mean the Donnelly employees?

Q. Yes.

A. Yes, I have talked to the girls myself about it, discussed it.

Q. Now, is it not a fact that the violence at the Gernes, Gordon, and Missouri plants caused the Donnelly employees to organize the Donnelly Garment Workers' Union?

A. Well, I guess that is what brought it about.

Q. Yes. I believe you stated that in March and April of 1937 you were in section 415?

[fol. 6243] A. In March and April?

Q. Yes.

A. Was that during the Sylvia Hull demonstration?

Q. Yes.

A. To the best of my knowledge, yes, that is where I was; it was on the eighth floor in section 415.

Q. Now, was section 415 a large section that ran across the entire floor of the building?

A. I couldn't be certain about that. There was an aisle that ran north and south in the building; whether it was all one section at that time I don't remember. I don't remember whether that whole row completely even with the division was one section, or to where the aisle was [was] one section, from there east, and from the aisle west was another section, I can't say about that, I don't remember.

Q. Which side of the aisle did you work on?

A. As I remember I worked on the east side of the aisle.

Q. Now, did that section have in it more than one instructor?

A. Well, if that section was divided, as I say, from the aisle, which was about the middle of the building, if it was divided there into two sections, and the section from the aisle east—if there was just that one row of machines in there, as a rule we just had one instructor, no other girl on the floor; and if it was a whole row clear from the east side of the building to the west side of the building, [fol. 6244] they generally had an instructor and a thread girl.

Q. Do you recall who the instructor was for section 415 during the months of March and April, 1937?

A. As I recall, it was Etta Dorsey.

Q. Do you recall any other instructors that worked in that section?

A. There was only one instructor to the section.

Q. I mean at any time.

A. An instructor that had that section?

Q. When you were in the section.

A. Well, I wouldn't say that any other instructor had that section, I wouldn't remember whether or not any other instructor had that section when I worked in that one particular place or not.

Q. I believe you stated that you worked in 1928 at the plant and then left in 1929?

A. To the best of my memory, yes. I know I left there in 1929.

Q. Then when did you come back?

A. In, I believe it was, in September; I am not certain about the month, but I know it was 1938—I mean 1935.

Q. 1935? A. 1935.

Q. Well now, will you state what section you worked in when you first came back?

[fol. 6245] A. In 1935?

Q. Yes.

A. I went to work in the—well, it was that same section, I presume it was the same number, 415, but it was in that one particular place in the building, on the eighth floor, I remember that.

Q. Then how long did you remain in 415?

A. Well, it seems to me that it was quite a little while, because at that time I was embroidering, and I know I stayed in that section as long as—during rush season, on

the embroidery machine, I couldn't say exactly how long it was, I don't remember.

Q. Do you ever remember working in any other section than 415?

A. Oh, I have worked in any number of different sections than 415. I was changed from one section to the other and from one floor to the other, all over the place.

Q. Has 415 always been on the eighth floor?

A. Well, I can't say definitely about that, because they change those sections around. 415 was a special section.

Q. Did you ever work in 415 on any other floor than the eighth floor?

A. Well, I don't remember about that, whether I did or not.

Q. Do you recall the names of any girls that were working in 415 in the months of March and April, 1937?

[fol. 6246] A. In 1937, in March and April—as I remember I was running an embroidery machine at that time. I am not absolutely certain, but I feel sure that there were Elsie Holloway and Ann Perry, Mabel Spielbusch—Ann Perry and Mable Spielbusch were embroidery operators—those girls that I remember were embroidery operators that were working right there with me. Maybe they were, but I wouldn't be positive about that.

Q. And you don't recall any other instructor for 415 than Etta Dorsey?

A. I wouldn't know whether there was, because they might have had other instructors for that section at different times.

Q. I mean when you worked in the section.

A. I don't recall. I remember working in 415 for Etta Dorsey; I don't know whether I worked for anybody else in that same section or not, I don't remember.

Q. What other instructors were in the section in which you worked, in any other sections?

A. In any other sections, any other instructors that I worked for?

Q. Yes.

A. Oh, let's see. I worked for Carrie Abrams and Mrs. Niemeyer, Kathryn Rosen, Grace Davis, and there were probably others, but those are the ones I remember working for in other sections.

Q. Now, you testified yesterday that you went over to [fol. 6247] Sylvia Hull's section on or about April 23, 1937. Is that correct?

A. Yes, I walked over to the section.

Q. And I believe you testified that you saw Sylvia taken out?

A. Yes, I seen that—I was back in the section when I saw that.

Q. What did they do, drag her out?

A. No, I wouldn't say they drug her out.

Q. What do you mean, by "taking her out"?

A. Well, there was a bunch of girls around her. I don't mean they picked her up bodily and carried her out, or dragged her out through the doors, or anything of the kind.

Q. Did they push her out?

A. I don't know that they pushed her out; I just saw a bunch of girls around her.

Q. What was Sylvia doing?

A. She was walking on her own two feet, she was going out under her own power, as far as that goes, but there was a bunch around her. I don't mean to say they were, you know, taking her out by any force.

Q. You don't mean then that they were forcing her out?

A. I mean they didn't have ahold of her, dragging her out, or anything like that; there was a bunch of girls around her, and she was walking.

[fol. 6248] Q. Did you hear girls say they weren't going to work so long as she stayed there? A. Yes, I did.

Q. I believe you stated this morning that the instructor sent you home. Now, when the instructor sent you home, had you been guilty of misconduct?

A. Not that I know of; I never was told that, anyway.

Q. Why did she send you home?

A. For the lack of work.

Q. Isn't it a fact that when work ran out, that the instructor would receive orders to notify the girls there was a lack of work?

A. I don't know what kind of instructions the instructors got. I don't know anything about that.

Q. You wouldn't know whether she had received instructions from Mr. Baty to notify you to go home?

A. I don't know what they told her.

Q. I believe you stated that instructors—or an instructor had transferred you at some time. Did you say that this morning?

A. No, I don't mean that the instructor had transferred me. The instructor had sent me down to Mrs. Hyde. Mrs. Hyde would give me the transfer and tell me what section to go to for Kathleen, or whoever happened to be in Mrs. Hyde's office.

•Q. That is a girl who worked there then?

[fol. 6249] A. I didn't know her last name, I just knew her first name.

Q. Would that occur when there was a lack of work?

A. When I would be transferred to other sections?

Q. Yes. A. Yes.

* * * * *

[fol. 6250] . . . Cross-Examination.

By Mr. Lane:

Q. Are you a married woman?

A. Yes, I am.

•Q. What is your husband's full name?

A. Robert Copenhagen.

Q. What is his occupation?

* * * * *

Mr. Langsdale: Just a minute. I object to that as immaterial.

* * * * *

Mr. Lane: I think it is proper cross-examination to show this witness' relation to any situation that affects her testimony here.

Trial Examiner Batten: I don't think so, as far as her [fol. 6251] family relationship is concerned.

Mr. Lane: I intend to ask her whether her husband is a member of any union and—

Trial Examiner Batten: I don't think it is material, and I now so rule.

* * * * *

[fol. 6252] Q. Now, without asking you specifically what your age is,—

A. I don't mind telling you.

Q. At any rate, you are past 30, aren't you?

A. Yes. I was 31 in June.

Q. And you know the nature of an oath, don't you?

A. I certainly do. I think I do.

Q. And you know the obligation entailed when you take an oath, don't you? A. I think I do.

[fol. 6253] Mr. Lane: Now, when you made this affidavit referred to on page 6077 you thought you understood what that affidavit meant, didn't you?

[fol. 6254] By Mr. Lane:

Q. Did you think you understood what that statement was that you were signing?

A. I thought I did.

Q. As a matter of fact, when you sign your name, you think you understand what you are signing your name to, don't you?

A. I wouldn't say I thoroughly understood everything I signed down at Donnelly's.

[fol. 6255] By Mr. Lane:

Q. Don't you think at the time you sign your name to something you understand what you are signing?

A. I think I should. I know now that I should. But at that time we signed so many things down there, you would sign them hurriedly and you didn't have time to stop and read those things thoroughly and absorb them like you should.

Q. So you did sign things down there that you didn't understand?

A. Yes. There is no doubt in my mind that I signed things down there that I didn't understand as thoroughly as I should have understood them.

Q. But at the time you signed this you thought you understood it?

A. I signed my name and didn't think much about it.

Q. Did you know there was a hearing going on before the National Labor Relations Board in 1939?

A. Pertaining to the Donnelly case?

Q. Yes.

A. I knew they were having hearings and things of that kind, yes.

Q. Wasn't that matter discussed at the Donnelly Garment Workers' Union meetings?

A. I believe it was.

Q. You knew witnesses were being produced and testifying under oath?

[fol. 6256] A. I knew of two witnesses from my section that were brought to some sort of a trial down here.

Q. When was the first time you ever talked with anybody about this affidavit that was shown you this morning, this intervenor's exhibit No. 20?

A. When? You mean, just recently?

Q. When was any time, other than the time you signed it? A. Other than when I signed it?

Q. Yes.

A. I don't know when the first time was.

Q. Well, you have talked with somebody about it before you took the witness stand, haven't you? A. Yes.

Q. Who was that? A. Miss Weyand.

Q. When did you talk with her about it?

A. Last night.

Q. Any time prior to last night?

A. I don't remember whether I did or not.

Q. When did you talk with Miss Weyand about your testimony in this case prior to last night?

A. Let's see. I believe it was in July.

Q. Now, are those the only two times you have talked with Miss Weyand?

A. No. I talked with her one other time, about a week ago.

[fol. 6257] Q. And you can't remember now whether on any occasion other than last night she showed you this affidavit, which is intervenor's exhibit No. 20?

A. No, I don't remember whether she did or whether she didn't.

Q. She may have done so, so far as your memory—

A. I don't remember whether she did or didn't. I wouldn't say she did or she didn't.

Q. Have you talked with anyone else connected with the National Labor Relations Board other than Miss Weyand? A. In regard to that?

Q. About your testimony in this case?

A. Well, Miss Blue—the young lady over there (indicating)—

Miss Weyand: Miss Boyls.

A. (Continuing) Miss Boyls. She was there last night.

By Mr. Lane:

Q. I mean anyone at the National Labor Relations Board, represented by Miss Weyand—anyone else connected with her that you talked with?

A. No one other than Miss Boyls.

Q. When did you talk with her? A. Last night.

Q. You mentioned Miss Blue. When did you talk with Miss Blue?

A. I was mistaken. I was calling Miss Boyls "Miss Blue."

Q. Did you ever talk with Miss Blue?

[fol. 6258] A. Yes.

Q. About your testimony in this case?

A. I don't know as it was about my testimony. Just talking—

Q. Where was that conversation?

A. Just here and there in the hall when we would happen to meet.

Q. You have talked with her only during your attendance at this hearing?

A. Yes. I never saw her before.

Q. You never saw her before? A. No.

Q. And the first person you talked with connected with the National Labor Relations Board was Miss Weyand?

A. Yes.

Q. And she showed you this affidavit? A. Yes.

Q. And you had given some thought about the answers you were going to make when you were confronted with it this morning?

Mr. Langsdale: Just a moment. I object to that as immaterial, not tending to prove or disprove any issue in the case, and certainly not proper cross-examination.

Trial Examiner Batten: I don't think it is improper. She may tell us if she has given any thought to it.

[fol. 6259] By Mr. Lane:

Q. Will you answer the question, please? Have you given any thought to what you were going to answer when you were confronted with this affidavit?

A. Yes, I thought about what questions might be asked me and what answers I would make, naturally.

Q. You were told by Miss Weyand that you would likely be confronted with that affidavit this morning, weren't you?

Mr. Langedale: Now, just a moment.

Has he a right to pry into the preparation Miss Weyand makes of her case in talking to the witnesses?

Trial Examiner Batten: I think, under the ruling I made in answer to Mr. Hogsett I would say no, but— She may proceed.

The Witness: May I have the question, please?

Trial Examiner Batten: Will you read the question, please?

(Thereupon the last question was read by the reporter.)

A. I don't remember whether she told me that that would be shown me this morning or not.

By Mr. Lane:

Q. At any rate, you thought it might, didn't you?

A. Well, I would expect to be shown most anything that might pertain to anything I had my name on.

Q. And you did think in your own mind about what answer you would give when that affidavit was shown to [fol. 6260] you, didn't you?

A. I thought about different things that might be asked me, yes.

Q. I show Board's exhibit No. 1-RRRR, which begins on page 3471 of the Circuit Court of Appeals record, and ask you to read that.

Trial Examiner Batten: What page is that, Mr. Lane?

Mr. Lane: 3471.

(Thereupon the exhibit referred to in the last question was read by the witness.)

By Mr. Lane:

Q. Now, I call your attention to the signature appearing on the fourth page of signatures, which is page 3477 of the Circuit Court of Appeals record, and particularly to the last signature in the first column on that page, and ask you to state whether that is your signature?

A. Yes, it is.

Q. Did you in your conversation with Miss Weyand about this case have this offer of proof called to your attention? A. You mean, did I see that?

Q. Yes. A. Yes, I saw that.

Q. You signed this offer of proof, didn't you, in 1939?

A. Yes.

Q. Did you read it before you signed it?

A. I don't remember whether I did or not.

[fol. 6261] Q. Did you have it read to you before you signed it? A. I don't remember.

Q. Do you remember this portion of it:

"The undersigned, all being employees of the Donnelly Garment Company or Donnelly Garment Sales Company below the rank of anyone with authority to employ or discharge or reprimand employees, and all being members of the Donnelly Garment Workers' Union, hereby state that they have read this statement in full, signed it of their own free will and choice, and if present in Court they would testify under oath to the following facts:"

Did you read that statement or hear it read to you before you signed this?

A. I don't remember whether I did or not.

Q. By saying you don't remember, you don't mean to say it wasn't read to you, do you?

A. I don't mean to say I did or didn't read it, or somebody did or didn't read it to me. I don't remember whether it was read to me or whether I read it or whether I didn't.

Q. Is there anything in this offer of proof that you now think was untrue at the time you signed it?

I will hand it back to you and you can go through it, and I will ask you to indicate anything in there, in that offer of proof, that you now think is untrue.

[fol. 6262] Trial Examiner Batten: You mean, now or—

Mr. Lane: That she now thinks was untrue at the time she signed it.

A. I would like to ask a question about this here (indicating). When they would have these signed, they would tell us that we were to sign—that they had something for us to sign—

Mr. Langsdale: Will you speak a little louder, please?

A. (Continuing) They would tell us they had something for us to sign. Of course, naturally, it was read to you, or you were supposed to read it yourself.

But right here (indicating) it says, "... Donnelly Garment Workers hereby state they have read this statement in full, signed it of their own free will and choice ..." I suppose that would be your choice, if they put it before you to sign. Would that be considered your choice?

Mr. Lane: Now, I am asking the witness to answer my question. I would like the reporter to read the question to her.

Trial Examiner Batten: Read the question, please.

(Thereupon the last question was read by the reporter, as follows:

"Is there anything in this offer of proof that you now think was untrue at the time you signed it?

I will hand it back to you and you can go through it, [fol. 6263] and I will ask you to indicate anything in there, in that offer of proof, that you now think is untrue.")

Trial Examiner Batten: Do you understand the question, Miss Witness?

Mr. Lane: And I have no objection to her making any explanation of anything she wants to explain.

Trial Examiner Batten: You may answer the question.

A. Well, the point that I meant to bring out there was, did the employees choose to bring this up and have this signed? I was notified. I didn't know they had it until I got down there. That's what I mean.

Mr. Lane: You go ahead and pick out anything in there you think is false.

A. I don't know as it was my choice. I was told that it was down there to be signed and I knew I was expected to sign it.

Trial Examiner Batten: Go on through it and tell us whether or not any of those items mentioned in there were true or—was that it—or untrue?

Miss Weyand: The witness was pointing out one item and stating whether it was her choice.

Trial Examiner Batten: I am asking her to proceed with it—

Miss Weyand: I wish she would finish with that one.

Mr. Lane: Let me ask the specific question.

[fol. 6264] By Mr. Lane:

Q. When you read in there, "... hereby state that they have read this statement in full, signed it of their own free will and choice, and if present in Court they would testify under oath to the following facts:" did you have the impression that you were not acting on your own choice?

A. At the time I signed this?

Q. Yes.

A. I'm not sure I even read this through.

Q. All right. Go ahead.

A. I'm not sure that I even knew what there was in it when I signed it.

Q. Go ahead and see if there is anything in there you think was untrue at the time you signed it.

A. Here (indicating) is something else:

"To the best of their knowledge and belief, the meeting of March 18, 1937, was called by employees." Of course, it was called by employees, but I never knew a meeting to be called actually by the girls that work in the factory. That's my point. The meetings were called by Rose Todd, or someone like that—they were not factory girls, the girls that were really the union members, because that was—the biggest part of the Donnelly Garment Workers' Union were factory girls, the girls that worked right in the fac-

tory. Those meetings were called— As I remember, Rose [fol. 6265] Todd called the first few.

Now, maybe that wouldn't prove that this was untrue, but that's my version of it.

This part right here (indicating) I don't think covers me:

"As a result of this information the attitude of the mind of the undersigned parties and of the employees of the company in general was one of apprehension, uneasiness, and fear that the employees of the Donnelly companies would be shortly subject to similar violence and intimidation which they understood and believed was being carried on in connection with the Gordon, Gernes, and Missouri strikes."

I didn't have any fear. I had no fear of them coming down there and bothering me, as I said before.

Q. Now, your answer applies only to you?

A. To me. I can't speak for anyone only myself.

Q. Did you read that in this statement before you signed it?

A. As I said, I don't remember whether I read this or not.

Q. You may have read it?

A. I don't know whether I did or not. I won't say I did and I won't say I didn't.

Here (indicating) it says that those things that happened at these other places was what influenced a belief as [fol. 6266] to possible and probable violence or intimidation by the International Ladies' Garment Workers' Union, and that that was one of the reasons which caused the undersigned to approve and to take a part in the formation of the Donnelly Garment Workers' Union. That didn't apply to me.

Q. That was not one of the reasons you thought caused the formation of the Donnelly Garment Workers' Union?

A. I mean, in signing this.

Q. I say, you now say the intimidation and things recited here did not apply to you, as far as the formation of the Donnelly Garment Workers' Union was concerned?

A. No. I had no fear of the outside unions intimidating me.

Q. Do you have any recollection of having read that at the time you signed that?

A. I don't remember whether I read this or not.

Q. So far as your memory now serves, you may have read this when you signed it?

Mr. Langsdale: I object to that as repetition.

A. I won't commit myself to say whether I did or did not read this, because I don't know.

By Mr. Lane:

Q. Did you have it read to you?

A. I don't know.

Q. Your memory on that is the same, you may have read that—

Mr. Langsdale: I object to that as repetition. It has [fel. 6267] been gone over and over and over again.

Trial Examiner Batten: As I understand it, she says she doesn't remember whether—

Mr. Lane: I am inquiring now as to a specific portion of this, and it isn't repetition.

Trial Examiner Batten: I think it is repetitious, where it has been asked several times, but you may ask the question.

Mr. Lane: She doesn't say she has no recollection about the document. She says she doesn't know whether she read all of it or any portion.

Trial Examiner Batten: You may proceed.

Is there a question pending, Miss Reporter?

Miss Weyand: She hasn't finished, has she?

Mr. Lane: I think I asked a question she hasn't yet answered.

Mr. Langsdale: It seems to me there is a question that the witness was asked and tried to answer.

The question, as I recall it, is; is there, whether you read it or not, anything in that document that you say is untrue? Isn't that the question to the witness?

Mr. Lane: No.

The Witness: That is why I understood I was reading that.

Miss Weyand: And you have not completed it?

[fol. 6268] The Witness: No.

Trial Examiner Batten: Well, complete your reading of the document.

(Witness complies.)

A. Well, I don't know how to express the last part of this, whether utterly this was true or untrue, but I still stick to the theory that I had the feeling that, according to the last part of this, that if I didn't belong to the union, I wouldn't have had a job. I still feel that way about it. I suppose if I had refused to sign any of these papers or pay my dues in the union, or such thing, I would have been without a job.

Mr. Lane: The question with respect to this instrument was, whether, having read it now, you now say there was anything in that which you in 1939, at the time you signed it, regarded as being untrue?

Mr. Langsdale: Just a moment.

A. In 1939—

Mr. Langsdale: Just a moment, please.

Trial Examiner Batten: Just a moment, Miss Witness.

Mr. Langsdale: I object to the question as repetition. She has gone through the document and answered that several things there were untrue in her opinion. It has been covered from one end to the other.

Trial Examiner Batten: I think she has answered.

[fol. 6269] By Mr. Lane:

Q. In 1939, at the time you signed it, did you then think there was anything in it that was untrue?

A. I couldn't say, because I don't know whether I read this or not.

Q. Did you ever hear of a closed shop contract between the Donnelly Garment Workers' Union and the Donnelly Company?

A. Yes, I have heard that mentioned.

Q. And don't you know that a closed shop agreement is an agreement by which the employees who are eligible for that union must belong to the union which has the closed shop agreement?

A. I don't know as I ever had it explained to me.

Q. Did you hear it discussed in the meeting of May 11, 1937?

A. Closed shop agreement?

Q. Yes.

A. I don't remember.

Q. Didn't you hear it discussed by the members of the executive committee and by Rose Todd that they contemplated asking the Donnelly Garment Company for a closed shop contract?

A. I don't remember.

Q. And wasn't it explained in that meeting, if they got a closed shop contract, everybody in the company eligible [fol. 6270] for membership in the union would have to belong to the union?

A. That's the way I got it.

[fol. 6274] By Mr. Lane:

Q. Mrs. Copenhaver, were you subpoenaed to come to this hearing?

[fol. 6275] A. Well, I don't know. I believe I was. I may be wrong, but I believe I was.

By Mr. Lane:

Q. Well, do you have—

A. (Interrupting) I have a paper that was given me.

Q. Do you have it with you? A. Yes, I do.

Q. May I have it, please? When was that served on you?

A. Day before yesterday.

By Mr. Lane:

Q. On April 27, 1937, at the meeting at which the Donnelly Garment Workers' Union was formed, what time did you go to that meeting?

[fol. 6276] A. In the afternoon.

Q. What time in the afternoon?

A. I don't know the exact time, but I know it was along in the middle of the afternoon.

Q. How many hours did you work during the week on which April 27 fell?

A. Well, I don't remember that.

Q. And you can't fix the time you went to that meeting?

A. Only that it was along in the afternoon; I would say around, probably between 2 and 3, 2 or 3:30, something like that.

Q. Did you go with the other girls in your section?

A. Yes.

Q. Did you go in your uniform, or did you change?

A. No, I went in my uniform.

Q. And did you stay during the entire meeting?

A. Yes.

Q. And what did you do after the meeting?

A. I don't remember whether I went back upstairs or whether I went directly—I will take that back; I remember I went back upstairs.

Q. Did you resume your work?

A. Well, I don't remember whether or not I worked any more, but I remember going back upstairs.

Q. You mean back up to the eighth floor?

[fol. 6277] A. Yes.

Q. Was your locker on the eighth floor? A. No.

Q. Where was your locker?

A. I don't remember whether it was on the second or third floor; it was where all the rest of the lockers were.

Q. You went back to the eighth floor?

A. I went back to the eighth floor, I am sure of that.

Q. But you don't know whether you worked any, yourself?

A. I don't remember whether I went back to work any more or not.

Q. What was your purpose in going back to the eighth floor?

A. I don't remember whether I went back to do more work or went back to put my work away, or left something back up there that took me up there, but I don't remember whether I went back to work or not.

Q. When you went down to the meeting that day, did you punch your time clock, your time card?

A. I don't remember.

Q. Do you remember whether you punched your time clock before you went to the meeting or afterwards?

A. I don't remember.

Q. Do you remember how many hours you worked that day? A. No, I don't.

Q. You don't know what time quitting time was for the [fol. 6278] section that day?

A. I know what quitting time should have been.

Q. Well, on that day, on April 27, 1937?

A. Our regular working hours was that I would have quit work, say, at 4 o'clock, I believe.

Q. Did you quit work at 4 o'clock every day that week?

A. I don't remember.

Q. Did you quit that day at 4 o'clock?

A. I don't remember because I don't remember whether I went back up and went to work or not.

Q. Mrs. Copehaver, don't you know that in any shop that has a closed shop agreement, the employees eligible to that union are required to belong to that union in order to keep their employment?

A. Really, I know nothing about unions.

Q. Well, do you know that particular matter? Do you know in a shop where a closed shop contract exists, those employees are required to belong to that union in order to keep their employment?

A. I know that now. I didn't say that I knew it then.

Q. Well, you know it now?

A. Yes, you have told me that.

Q. Well, I am asking you if you know.

A. Well, I know after you have told me.

Q. Were you paid for the time spent at the meeting on [fol. 6279] April 27, 1937, in which the Donnelly Garment Workers' Union was organized?

A. I never noticed any deductions from my pay.

Mr. Reed: I can't hear the answer.

A. I never noticed any deductions from my pay.

By Mr. Lane:

Q. You didn't notice any deductions? A. No.

Q. Well, you were a time worker, weren't you?

A. Well, I worked piece work.

Q. I mean to say piece work.

A. Yes, I done piece work.

Mr. Lane: I think that's all.

Trial Examiner Batten: Miss Weyand?

Miss Weyand: No questions.

Trial Examiner Batten: That's all. Oh, that subpoena, young lady, you'd better have it or you won't possibly be able to collect your money.

What is it you want? You want to know how Miss Weyand got it?

Mr. Ingraham: Yes.

Trial Examiner Batten: I issued that at her request, a written request.

That is all, young lady.

Mr. Langsdale: Just a moment. I want to ask her one question.

[fol. 6280] By Mr. Langsdale:

Q. You stated already that the violence and the newspaper articles and talk of violence had nothing whatever to do with your joining the Donnelly Garment Workers' Union, did you not? A. Yes.

Q. Do you know any person who did join on that account? A. Because of the—

Q. (Interrupting) Violence and the newspaper articles and everything of that sort? A. No, I don't.

Mr. Lane: That is objected to for the reason she said that was one of the reasons why it was formed.

Mr. Langsdale: Oh, no, she didn't.

Mr. Lane: And it is an attempt to rehabilitate the witness.

[fol. 6281] By Mr. Langsdale:

Q. (Continuing) Because of the violence and newspaper articles shown you, or any fear or threats of violence?

A. You mean, is that why I joined?

Q. No. A. Why anyone else joined?

Q. Do you know of anyone else who joined on that account?

A. Because they were afraid of that violence?

Q. Yes, do you know of anybody, any single human being?

A. No, I don't know of anybody that joined because of that.

Q. And do you know why the Donnelly Garment Workers' Union was formed, did anyone ever tell you?

A. Well, I don't know whether they told me or not; I had my conclusion of why I myself—my opinion—

Q. (Interrupting) I know, but did anyone ever tell you that? A. I don't know as anyone did.

Q. Did anyone connected with the management tell you why they were forming the Donnelly Garment Workers' Union? A. To keep other unions out.

Mr. Lane: Just a moment. I move to strike the answer [fol. 6282] out.

Trial Examiner Batten: It may be stricken.

Mr. Lane (Continuing) Because it was made before I had a chance to object. The question implies something that is not in evidence as far as this witness is concerned. The question was: Did anyone ever tell you why the management was forming that union.

Mr. Langsdale: No, that was not the question.

Mr. Lane: Will you read the question, please?

Mr. Langsdale: Please read the question.

Trial Examiner Batten: I don't recall it that way.

(Thereupon the last question was read by the reporter, as follows:

"Q. Did anyone connected with the management tell you why they were forming the Donnelly Garment Workers' Union?"

Mr. Lane: I object to that as—

Q Mr. Langsdale: (Interrupting) Let me amend that to read in this way:

Mr. Langsdale: Did anyone connected with the management of the Donnelly Garment Company ever tell you why the Donnelly Garment Workers' Union was being formed?

Mr. Stottle: The respondent objects to that unless it is identified who it was that was connected with the management which he refers to, because that leaves open as to her interpretation of who was connected with the management.

Mr. Langsdale: Her answer can be "yes" or "no" on that.

[fol. 6283] Trial Examiner Batten: Of course, I think we have had quite a few questions about whether anyone connected with the management did this or did that.

Do you recall the question, Miss Witness?

A. Well, as I understand the question is, was the people that told us—

Mr. Langsdale: No. Read the question, please.

Trial Examiner Batten: Please read the question.

(Thereupon the last question was read by the reporter, as follows:

"Q. Did anyone connected with the management of the Donnelly Garment Company ever tell you why the Donnelly Garment Workers' Union was being formed?")

Mr. Langsdale: You may answer that "yes" or "no".

Trial Examiner Batten: But you don't have to.

A. What I want to know is, do they consider Rose Todd as being connected with the management?

Mr. Lane: That is the purpose of the objection. Obviously she doesn't know.

Trial Examiner Batten: Of course, it was just as obvious with the questions asked many others, except perhaps the witnesses didn't ask the question this witness did, as to who is management.

By Mr. Langsdale:

Q. Will you answer that "yes" or "no"?

A. If Rose Todd—

Q. (Interrupting) No, just answer it "yes" or "no".

[fol. 6284] Trial Examiner Batten: She doesn't have to answer it "yes" or "no".

Mr. Langsdale: I know she doesn't, but I wondered if she could.

Trial Examiner Batten: That is for the witness to determine; but she certainly doesn't have to.

Now, may we have the question read again?

(Thereupon the last question was read by the reporter, as follows:

"Q. Did anyone connected with the management of the Donnelly Garment Company ever tell you why the Donnelly Garment Workers' Union was being formed?")

Mr. Reed: Now, let the witness say.

Trial Examiner Batten: Well, if there aren't any more interruptions, so we don't have to have it read again.

Now, will you answer the question, Miss Witness?

A. I don't know how to word it.

Mr. Langsdale: Well, let me reframe it. Did anyone ever tell you why the Donnelly Garment Union was being formed?

A. Rose Todd did.

Mr. Reed: Just a minute. We object to that as incompetent and immaterial, and in no wise binding upon the respondent in this case.

Trial Examiner Batten: She may answer, whether anyone ever told her it was being organized.

[fol. 6285] Mr. Langsdale: She has answered it.

Will you read the answer?

(Thereupon the last answer was read by the reporter, as follows:

"A. Rose Todd did.")

By Mr. Langsdale:

Q. What did Rose Todd tell you?

A. Well, I can't remember in words, but it was—the way I grasped it, the expression was that if we had a union of our own, we wouldn't be bothered with an outside union.

Q. Now, when you answered Mr. Ingraham's question this morning, which question was to the effect, was the violence at the plants where the strikes were going on, the reason for forming the Donnelly Garment Workers' Union, your answer was, "I guess that was the cause." Did you know any more about the cause than you have stated here in answer to my questions?

A. Not other than I thought it was organized to keep the other unions out. I guess that probably made the situation—well, complicated, when all that other trouble started up there, that was just some more to bring into it, but I felt it was being organized to keep the other unions out, because it was organized at the time all that was going on.

Q. Do you remember where you signed this document that has been marked Board's exhibit 1-RRRR?

[fol. 6286] By Mr. Langsdale:

Q. Do you remember where you signed that document, that is, the one you were shown, to which a lot of names were signed?

A. I don't know as I remember exactly where I was when I signed that one.

Q. You said something about a half a dozen of you together being called somewhere and signing it together.

A. That was the one we swore to?

Q. That was the one you swore to.

A. Yes, where there was a group of five or six of us together.

Q. I see. Now, do you have any recollection at all as to where you signed this Board's 1-RRRR?

A. You mean the one where we swore to it?

Q. No, I mean the other one.

A. I don't remember a whole lot about that one.

Q. Was it somewhere in the plant?

[fol. 6287] A. (Interrupting). It was on the premises.

Trial Examiner Batten: She said it was on the premises.

A. It was on the premises. I never signed one that was away from the building. Every one I ever signed was right there in the building, some place in the building.

By Mr. Langsdale:

Q. Were you ever shown any document down there to sign that you didn't sign?

A. No.

Q. You signed them all?

A. Every one that I was presented with.

Mr. Ingraham: So the record will be clear, you testified this morning that the violence at the Gernes, Gordon, and Missouri plants caused the formation of the Donnelly Garment Workers' Union?

Mr. Langsdale: Just a moment,

A. (Interrupting) No, I didn't.

By Mr. Ingraham:

Q. What did you testify to?

A. I said I guessed it did. I didn't know that it did, I had no proof that it did.

Q. Now, after Mr. Langsdale's leading and suggestive questions, do you want to change your guess?

[fol. 6288] A. No, I do not.

Q. Are you standing on your answer to that question?

A. I am standing on my answer that I am guessing.

Mr. Ingraham: All right, she is standing on her answer, Mr. Langsdale.

By Mr. Ingraham:

Q. Now, on April 27, that is the date of the formation of the Donnelly Garment Workers' Union, had you attended any other meetings of employees prior to that time?

A. Yes.

Q. Where?

A. There at the plant.

Q. When?

A. Oh, I don't recall when they were.

Miss Weyand: I object to this as not proper recross.

Trial Examiner Batten: Well, I don't think it is either.

Mr. Ingraham: I wanted the witness to clarify her testimony with respect to meetings she attended. She doesn't recall dates and I think I have a right to ask the witness if, instead of: "Did you attend a meeting in March or April," to ask her if she attended meetings prior to that time.

Trial Examiner Batten: Well, of course, as a practical matter, I think perhaps you have, Mr. Ingraham, because I remember Mr. Lane asked quite a bit about meetings, but that question illustrates the exceedingly difficult situation we find ourselves in, proceeding on the basis—unless I take [fol. 6289] out a 3-hour course—but if it is a matter of a few questions, go ahead, Mr. Ingraham.

By Mr. Ingraham:

Q. Do you recall the time of any meeting prior to April 27?

A. You mean the date?

Q. Yes.

A. No.

Q. Do you recall going to any meeting in the year 1937 prior to that date?

A. Well, it seems as though we had some sort of meetings, I don't know when they were or what month they were held, or what years they were held in, I couldn't remember.

Q. All right. Tell me anything that occurred at any of those meetings, prior to the meeting of the formation of the Donnelly Garment Workers' Union.

Mr. Langsdale: If the Court please, this certainly doesn't clarify anything; this is a further effort to search her memory, and certainly it is not recross. He had an opportunity to do that on his first cross-examination.

Trial Examiner Batten: You may proceed.

A. I believe—now, I am not certain, but I believe there was a meeting held just a short time before.

By Mr. Ingraham:

Q. Before the April 27 meeting?

A. The April 27 meeting.

Q. What occurred at that meeting?

[fol. 6290] A. Well, I don't know, as I can remember exactly what occurred, but it seems to me like we had a meeting of some description just before that.

Q. Do you recall anything that occurred at any meeting that you say you went to, prior to the meeting of April 27?

A. That was prior to the meeting where the union was organized, and we signed the cards?

Q. That is correct.

A. Well there is one meeting we had, I don't know when it was, that Mrs. Reed spoke, I remember going to a meeting where she spoke.

Q. You were at that meeting?

A. I was at that meeting.

Q. Now, when did that meeting occur?

A. I don't remember when.

Q. What floor was it held on?

A. Well, I wouldn't be certain about that either.

Q. Do you know anything that took place at the meeting?

A. No; I just remember of Mrs. Reed speaking at a meeting one time.

Q. Are you sure this was in 1937?

A. Yes, I am sure that Mrs. Reed spoke in a meeting in 1937.

Q. Did you ever hear Mrs. Reed speak at more than one meeting?

A. I don't remember about that, I can't say definitely whether I did or not.

[fol. 6291] Q. Now, were you in Etta Dorsey's section at that time, at the time that meeting was held?

A. I believe I was, but I won't be positive on that, but I feel that I was.

Q. And did Etta Dorsey tell you to go to that meeting?

A. Well, I don't remember. I couldn't say definitely that Etta Dorsey did, because I may not have been in her section, but whoever the instructor was told me.

Q. But did Etta Dorsey tell you to go to the meeting of April 27?

A. If she was the instructor there she did. The instructor in that section told me, and I have already testified that I think it was Etta Dorsey, and if Etta Dorsey was the

instructor there in that section at that time, she was the one that told me.

Q. So, you aren't sure now that Etta Dorsey was the instructor?

A. I could be wrong about that, but I feel sure that Etta Dorsey was the instructor at that time.

Q. So whoever the instructor was in your section told you personally to go to the meeting?

A. Well, I wouldn't say personally. They usually told a group of girls at a time, they would just walk up and—

Q. (Interrupting) Who was in the group of girls—

Trial Examiner Batten: (Interrupting) Mr. Ingraham, [fol. 6292] I don't think this is recross at all.

Mr. Langsdale: It is not recross.

Trial Examiner Batten: I thought you wanted to explain something here. It seems to me you are going into matters that under no classification could be considered as anything that was brought up since you finished with this witness.

Mr. Ingraham: Well, Miss Weyand didn't re-examine.

Trial Examiner Batten: Of course, she didn't but because she didn't re-examine the witness doesn't give you the privilege of continuing on.

Mr. Ingraham: Well, I didn't know that there was any strict rule to rebuttal or redirect, if applied—

Trial Examiner Batten: Of course, there isn't any strict rule, but I think I said yesterday, with the first witness, that I thought the witness was being passed around too freely.

Naturally, when you take turns, I expect you to complete with everything up to that point.

Mr. Ingraham: Well, I take it you are ruling that my questions aren't proper recross.

Trial Examiner Batten: I don't think they are.

Mr. Ingraham: I mean that you are ruling that way.

Trial Examiner Batten: I say, I don't think they are. Do you?

Mr. Ingraham: Yes, I do; yes.

Trial Examiner Batten: Well, I don't think they are, [fol. 6293] and I'll rule that they are not, at least the last question.

Mr. Ingraham: That's all.

Trial Examiner Batten: If you have any further questions I am not ruling on those.

Mr. Ingraham: Well, I kind of thought someone did examine the witness further about these meetings.

Trial Examiner Batten: Well, you ask this witness as many as you have.

Mr. Ingraham: You have ~~stated~~ that you went to the meeting of April 27, I believe? A. Yes.

Q. Now, what time was that meeting held?

Mr. Langsdale: That is objected to as not proper re-cross-examination.

Trial Examiner Batten: You may proceed.

A. In the afternoon.

By Mr. Ingraham:

Q. What time in the afternoon?

A. I couldn't be positive about that, I don't remember the time.

Q. Was it between 2 and 3?

A. I would say between 2 and 3 to 3:30; that is just an estimate of mine.

Q. Now, did you go to the meeting with the other girls in your section? A. Yes.

[fol. 6294] Q. Do you recall how many hours you were working during that time? A. No.

Q. Well, what was your usual time of quitting work?

A. As I remember, 4 o'clock.

Q. Did you have plenty of work at that time?

A. Well, I don't remember about that, how plentiful the work was.

Q. Now, how long did the meeting last?

A. I don't know, I don't remember how long it lasted.

Q. Would you say an hour?

A. Well, I just judge an hour, I would say an hour. I don't know how long it lasted, I don't know that it lasted an hour, or 2 hours, or an hour and a half, or half an hour, but I imagine it lasted at least an hour.

Q. Then, you say, you went back up to your section after the meeting?

Miss Weyand: I object to this as entirely repetitious and not proper recross.

Trial Examiner Batten: Overruled.

A. What was the question?

By Mr. Ingraham:

Q. Did you return to your section after the meeting?

A. I went back upstairs, yes.

Q. Did you go with the girls in your section?

[fol. 6295] A. Girls—I don't know whether they were girls in my section or not, but there were other girls that went up with me.

Q. Did you continue work then, after you returned?

A. I don't remember whether I went back to work or what my purpose was to go back up there, whether it was something I had forgotten, or something, or whether I went to put my work away, or I went back up there to go to work, or what took me back upstairs.

Trial Examiner Batten: Mr. Ingraham, the last two or three questions, do you think that is co-operating with me when I asked you and the intervener to not cover the same ground? They are identically the same questions.

Mr. Ingraham: The next question, I don't think, will be. Maybe that was.

Trial Examiner Batten: Perhaps it won't be.

By Mr. Ingraham:

Q. If you quit work ordinarily in the middle of the afternoon, did you then leave the plant?

A. I don't understand what you mean.

Q. Well, if, say, work ran out, there wouldn't be any further work, then would you leave the plant?

A. If there wasn't any further work in my section I was sent to Ella Mae, and if Ella Mae didn't put me in another section to finish out the day, I went home.

Q. You went home?

[fol. 6296] A. If I wasn't placed someplace else in the plant, but I didn't just stay around there if I wasn't doing anything.

Q. If work ran out at 3 o'clock, say, in the afternoon, you would report to Ella Mae, and if there wasn't any work you would go home. Is that a fact?

A. If I ran out of work in my section, I was sent to Ella Mae, even if it was 3 o'clock in the afternoon. Is that what you mean?

Q. Yes.

A. And if she didn't place me in some other section, I was sent home.

Q. Now, on April 27, do you recall running out of work about 3 o'clock? A. No, I don't.

Q. Or shortly thereafter? A. No, I do not.

Q. Do you recall there being a lack of work at that time, during that week, in your section?

A. I don't remember how much work we had, whether we were short on work or work was plentiful at that time. I don't remember about that.

Q. Now, do you say that you were paid for a full day's work on April 27, 1937?

A. To the best of my knowledge, I do not remember any deductions being taken from my pay.

[fol. 6297] Q. You don't recall not having any work the morning of April 27?

A. I stated before that I don't remember whether work was plentiful that day or at that time, or whether we were out of work. I know that I was working when I was called to the meeting, I do know that.

Q. And you also know that you were paid for the time you spent at the meeting?

A. I don't remember of any money being deducted from my check other than what I figured I would draw that week; I don't remember any money being deducted from my check.

Q. Do you recall what your check was that week?

A. No, I do not.

Q. If you worked less than 40 hours that week, would that indicate that you didn't work the full 8 hours a day?

A. If I worked less than 40 hours that week?

Q. Well, if your pay was less than your usual pay for 40 hours, would that indicate you didn't work the full 40 hours?

A. Well, if I had any time off, I knew how much time I had off, if I had been off any.

Q. Did you have any time off that week?

A. I don't remember.

Q. Would you say that you didn't quit work on Wednesday—I mean on the day of this meeting, around 3 o'clock?

A. I absolutely know I was working when I was called [fol. 6298] to that meeting, I do know that.

Q. Are you sure you went to the meeting?

A. Why, absolutely.

Q. What occurred at that meeting?

Mr. Langsdale: I object to that as not proper recross examination.

Trial Examiner Batten: Well, I think I have indicated two or three times that I don't think it is; clearly it is not. But Mr. Ingraham may proceed.

A. Do you want me to tell you?

Trial Examiner Batten: He seems to think it is.

A. What happened at that meeting, do you want me to tell?

By Mr. Ingraham:

Q. Yes.

A. On April 27, when the Donnelly Garment Workers' Union was formed?

Q. That is correct.

A. That was the meeting whereby we signed the cards joining the union.

Q. Did you do anything else?

A. At the meeting?

Q. Yes.

A. Nothing other than sit and listen.

Q. Listen to what?

A. The discussion of the union.

Q. Who talked?

[fol. 6299] A. Mr. Tyler, Miss Todd, I remember those two very distinctly.

Q. Did Mrs. Reed talk?

A. Not that I remember of.

Q. Did Mrs. Reeves?

A. Not that I remember of. I remember very distinctly of Mr. Tyler and Miss Todd talking, but I couldn't be positive of anybody else that talked.

Q. And you don't recall how long that meeting lasted?

A. No, I do not.

Q. Now, do you recall anything that either Mr. Tyler or Miss Todd said?

A. I remember when the cards were passed out that Miss Todd told them to pass the cards out and not to take them up until she told them to, to see that everybody had a card, and not to take the cards up until she told them to take them up, because I know we had the cards quite a little while during the meeting there; at the time the meeting was going on, we had the cards in our possession and they weren't taken up until the last part of the meeting.

Q. Did some of the people sign the cards the next day?

A. Not that I know of.

Q. Did Miss Todd say anything about that, that they could take the cards, that they didn't have to sign there?

A. Well, I was under the impression that everybody [fol. 6300] that was in there was to sign their cards and hand them back.

Q. And she didn't say they could keep them overnight?

A. Not that I ever remember her saying that, no.

Q. Did anybody outside of Rose Todd ever discuss with you or in your presence why the Donnelly Garment Workers' Union was formed?

A. No. The only time I heard Rose Todd say that was at a meeting, that it was—

Q. (Interrupting) which meeting?

A. I don't remember which meeting, particularly, that it was. I can't remember what happened at all the meetings we had.

Q. But nobody outside of Rose Todd, according to your recollection, ever discussed why the Donnelly Garment Workers' Union was formed?

A. Not that I remember of.

Q. Now, this statement that you have referred to, of Rose Todd's that was made at a union meeting?

A. What statement was that?

Q. As to why the Donnelly Garment Workers' Union was formed?

A. As I remember it, that statement was made at a meeting.

Q. And that was not made to you personally?

A. Oh, no.

[fol. 6301] Q. You have been sitting in the courtroom while the Board's witnesses have testified, have you not?

A. Yes.

Q. You have heard their testimony?

A. I heard Mrs. Dorsey's and Mrs. Skeens'.

Q. When you worked for Mrs. Dorsey did she discriminate against you in giving you work?

A. No. Mrs. Dorsey was one of the nicest instructors I ever worked for.

Q. Did you understand that the work was planned in the office upstairs?

A. I had the understanding that the work was planned. I didn't know where it was planned, whether upstairs, or where.

Trial Examiner Battey: Mr. Ingraham, do you think this is the subject of recross-examination?

Mr. Ingraham: Well, it may not be strictly recross-examination, but I think I have a right to ask the witness briefly about that subject.

Trial Examiner Batten: Why?

Mr. Ingraham: It wasn't asked on direct, but I notice in my notes that she testified about work being given out.

Trial Examiner Batten: Then, you mean you overlooked it; is that right?

Mr. Ingraham: Yes, I did.

Mr. Langsdale: May I suggest that if he is stalling for [fol. 6302] some message of Mrs. Hyde's, we will keep her here and you can recall her.

Mr. Ingraham: I am not stalling. I have a note here that she testified about dividing work.

Trial Examiner Batten: Well, let's proceed.

How much more do you have that you have overlooked, Mr. Ingraham?

Mr. Ingraham: That is all.

Trial Examiner Batten. Well, let's proceed.

By Mr. Ingraham:

Q. You understand that the work was planned in the office?

A. I didn't understand it was planned in the office. I was under the impression that it was planned. A company as large as that would have to plan its work. I didn't know where it was planned, whether in the office, or where it was.

Q. Who brought the work to the sections?

A. It was brought down to the floors and they had bundle boys that brought the work from section to section in baskets.

Q. And if you were an embroidery operator, you would be given embroidery work?

A. If I was doing embroidery work, I was given embroidery work.

Q. And other embroidery operators would be given that kind of work, too?

A. That was the only kind of work they could do on the [fol. 6303] embroidery machine, was embroidery work.

Q. Have you ever gone up and gotten a bundle yourself? A. No.

Q. You have never done that?

A. No. We were not allowed to do that.

Q. You were not allowed to? A. No.

Q. Did you feel if Etta Dorsey didn't want to give you a bundle she didn't have to give you a bundle?

A. I felt that was entirely up to her. She had the privilege of giving the bundles to who she wanted to.

Q. And you couldn't do anything about that?

A. Oh, I don't know. If I had wanted to fuss about it, I could probably have fussed about it to different ones.

Q. Did you ever know of her doing anything like that?

A. You mean, not dividing the work up evenly?

Q. Yes.

A. She was always awfully fair with me.

Q. Do you know, as a matter of fact, that was her absolute instructions, to give the bundles to the people that were ready for the bundles?

A. I don't know a thing about her instructions.

Q. Did the bundles come down, if you know, with directions?

A. No. As I remember, all that I ever saw of the bundles, they came down with tickets but no directions written on the bundle.

[fol. 6304] Q. What were the tickets?

A. The price tickets, the number of the bundle, and the size, and the cut number.

Q. Now, if it was a bundle that was to be given to girls on the embroidery machine, would that be indicated?

A. Yes, it would be indicated that it was embroidery, either by number or with "Embroidery" written on there. I don't know if it had a number showing it pertained to the embroidery section or if it was written on there—I don't remember about that, but it was always designated what section it was to go to.

Q. And then Mrs. Dorsey would give you a bundle and the other embroidery operators bundles after they came to the section; is that correct?

A. She gave out the work when she was the instructor in my section.

Q. And you never knew of any time that she didn't give the work out fairly?

A. To me, Mrs. Dorsey was perfectly fair.

Q. And you don't know what her instructions were from the office?

A. I know nothing about her instructions.

Q. And you don't know what the bundle boys' instructions were, do you? A. No, I don't.

[fol. 6305] Q. Did you make your minimum during the last three months that you were at the plant?

A. I don't remember whether I did or not.

Q. Do you have any recollection about that at all?

A. I don't remember whether I made my guarantee or not. I don't remember how much I made.

Q. Do you recall, as a matter of fact, that the company had to make up to you practically your guarantee during the last period you were there at work?

A. No, I don't recall that. They may have had to make up some to me, but I don't think they had to make it up every week.

Q. The last six weeks you were there?

A. I don't know what I drew the last six weeks. I don't even know whether I drew my guarantee the last six weeks.

Q. That is what I am asking you. You have no recollection of what the company had to make up to you because you didn't have your guarantee?

A. I don't remember about that. I don't remember whether I had my guarantee or not.

[fol. 6306]

Cross-Examination

By Mr. Lane:

Q. Mrs. Copenhagen, you testified in response to a question by Mr. Langsdale that you didn't know of anyone who joined the union because of the violence and the disturbances that were occurring at the Gernes, Gordon, and Missouri plants; is that correct?

A. No one told me that that was why they were joining.

Q. You said you didn't know of any individual—

A. No individual told me that, no.

[fol. 6307] Q. You testified that there was no other individual you could name who joined the union for that reason? A. No one told me that.

Mr. Lane: All right. Do you know of anyone who was not influenced by that?

A. I would rather not testify to anybody else's ideas in that case. I would rather just testify to my own.

By Mr. Lane:

Q. Then, when you answered Mr. Langsdale that you didn't know of any individual who joined for that reason, your answer is, you had no information at all about it; is that correct?

A. No. What I mean is, nobody came to me and told me that—that that was why they were or why there were not joining and helping form the union.

[fol. 6308] Q. And nobody came to you and told you they were not influenced by that violence?

A. Nobody told me either way. That is why I say I would rather not testify to anybody else's ideas.

Q. But you have no personal knowledge about that at all?

A. I don't know whether anybody was influenced or was not influenced by that.

* * * * *

BESSIE WEILERT, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Miss Weyand:

Q. Will you please state your name?

A. Bessie Weilert.

* * * * *

[fol. 6309] By Miss Weyand:

Q. When did you begin to work at the Donnelly Garment Company?

A. One season before they moved to the Corrigan Building, when they were at the Coca-Cola Building.

Q. When was the next time you worked at the Donnelly Garment Company?

A. In the spring of 1933 or 1934.

Q. How long did you continue to work at the Donnelly Garment Company at that time?

A. With the exception of about three short periods off, until March of this year.

Q. What was the longest of those periods off?

A. About fourteen months.

Q. When did those fourteen months off occur?

A. It was the last of 1940 and all—almost all of 1941.

Q. What was the next longest period off?

A. About three months.

Q. When was that off?

* * * * *

A. 1938, I believe.

By Miss Weyand:

Q. Were you working at the Donnelly Garment Company in March and April of 1937?

[fol. 6310] A. I was.

Q. What sections were you working in during those months?

A. 413, Lola Skeens' section.

Q. And that was on what floor? A. Eighth floor.

Q. Who was the thread girl in that section at that time?

A. Nellie Biggs.

Q. Did you attend the meeting at which the Donnelly Garment Workers' Union was formed?

A. I did.

Q. How did you learn of that meeting?

A. My instructor told me.

Q. What time of day was that meeting held?

A. In the afternoon.

Q. Was it during working hours or after working hours?

A. During working hours.

Q. Did you time out before going to the meeting?

A. No.

Q. Do you have any specific way of remembering that?

A. I certainly do, because I thought I never would get out of the place, because we had to change our uniforms after we came back upstairs, and it was just a terrible mess.

Q. Did you get home late?

A. Not very.

Q. Did you get paid for the time you spent at that meeting?

[fol. 6311] A. I must have. I didn't time out until after I came back upstairs.

Mr. Lane: I move to strike out the answer, she "must have," as being speculation.

Trial Examiner Batten: It may stand.

Miss Weyand: Had you ever seen Mr. Tyler before the meeting at which the union was formed? A. No.

Mr. Lane: Mr. Examiner, with respect to all of these questions, the intervenor objects, with respect to this witness, as not proper rebuttal.

Trial Examiner Batten: You may have a continuing objection.

Mr. Ingraham: Respondent makes the same objection.

Trial Examiner Batten: You may have a continuing objection.

By Miss Weyand:

Q. Had you ever heard of Mr. Tyler before that meeting? A. No.

Q. Did you sign a card at that meeting? A. I did.

Q. Why?

A. Well, I felt it was our duty, if we wanted to work there.

Q. Do you know if any effort was made to have every one sign a card before he left the meeting?

[fol. 6312] A. There certainly was. Rose Todd had the cards given out by boys, and those cards were numbered, so many in the row, that was sitting in the row—they were numbered and everybody got one, and no more than one, and they were taken up likewise, and they were counted, because she told them to count the cards as they took them up.

Q. When you say "numbered" you don't mean there was a number written on—

Mr. Lane: I object to the leading question. I think it is improper for counsel to put words in a witness' mouth, when she has an answer she thinks is unfavorable.

Mr. Langsdale: I think it is a little late for Mr. Lane to be talking about leading questions.

Trial Examiner Batten: You may proceed. I have stated I am not going to instruct counsel how to ask their questions. If they persist in asking the witness questions that do not give the witness an opportunity to answer but simply say Yes or No, I presume that whoever passes upon this will give such weight to these answers as is proper.

Mr. Reed: May the question be read, the last question?

Trial Examiner Batten: Read the question, please.

(Thereupon the last question was read by the reporter.)

Trial Examiner Batten: You hadn't finished your question.

Miss Weyand: (Continuing)—the card, do you?

[fol. 6313] Mr. Reed: Now, that is objectionable on other grounds. The witness has just given an answer—

Trial Examiner Batten: I think it is objectionable. I think the question to the witness should be, "What do you mean by numbers on the card?"

By Miss Weyand:

Q. What do you mean by "numbered"? I believe that was your expression.

A. There were so many seated in the row, the numbers were counted out, and that number was your—

Q. By "numbered" you meant "counted"?

Mr. Reed: Now, that is an effort to supplement the answer of the witness by a statement of counsel. That isn't proper.

Trial Examiner Batten: We will proceed.

By Miss Weyand:

Q. Do you remember how the cards were taken up?

A. The same as they were given out.

Q. And that was what? A. By boys.

Q. Do you know whether they counted them?

A. They did. They seen that everyone gave their cards back.

Q. Did Rose Todd say anything about that in your presence?

A. She said, "Now, does everyone have a card?" She kept mentioning that, "Does everyone have a card? Now, [fol. 6314] don't leave until you have all of the cards."

Q. Do you remember any other meetings of the Donnelly Garment Workers' Union?

A. Yes, plenty of them.

Q. Did you attend meetings of the Donnelly Garment Workers' Union quite regularly? A. Yes.

Q. What do you remember happening at any other meeting of the Donnelly Garment Workers' Union?

A. Well, Rose Todd presided at the meeting and Marjorie Green took notes, and—

Mr. Lane: Excuse me. Are you referring now to the organization meeting or a subsequent meeting?

The Witness: Meetings.

Trial Examiner Batten: She is talking about union meetings.

A. (Continuing) And when there was a motion made of any kind, or anything came up, someone would say, "I make a motion—", and we would say, "Well,—", someone would say "Second the motion," and everyone said "Aye."

By Miss Weyand:

Q. Did you ever see an instructor attend a meeting of the Donnelly Garment Workers' Union? A. Yes.

Q. Do you remember whether instructors continued to attend up to July 15, 1939?

[fol. 6315] A. They were still attending meetings when I quit for that year.

Q. Did you ever complain about instructors attending meetings? A. Many times.

Q. Why?

A. Because I didn't think the girls felt free to talk before their instructors, and I told Rose Todd many times I didn't think that should be permitted.

Q. What authority does an instructor exercise over the girls in her section?

A. Well, one exercised enough to keep me home three weeks from work, without it, apparently, being know in the office.

Q. Who was that?

A. Well, with due respect to the instructor now,—I think very much of her now—it was Grace Giotto.

Q. Why did she send you home?

A. Well, I had just come over to the Corrigan Building from their other building at Twenty-sixth and McGee, and I guess she just didn't understand me and I didn't understand her—

Mr. Lane: Mr. Examiner, may I ask a preliminary question before making an objection?

Trial Examiner Batten: Well, if you will let the witness answer before interrupting—

[fol. 6316] Mr. Lane: Excuse me.

Trial Examiner Batten: Will you read the answer thus far, please?

(Thereupon the last answer was read by the reporter, as follows:

"Well, I had just come over to the Corrigan Building from their other building at Twenty-sixth and McGee, and I guess she just didn't understand me and I didn't understand her.")

Trial Examiner Batten: Now, complete your answer.

A. (Continuing) —and she told me she wanted to put a hemmer on my machine—there was no other vacant machine— and I was supposed to come back, I supposed, when the hemmer had finished her work. And about three weeks later I called the office and told Ella Mae Hyde I wanted some definite answer about when I was coming back, because I was going to make other arrangements, and she said, "Why aren't you working, Bessie?" And I told her. And she said, "You come in tomorrow morning." And I did.

Mr. Ingraham: I move to strike—

Mr. Lane: May I ask the preliminary question I wanted to ask before objecting?

Trial Examiner Batten: Yes.

By Mr. Lane:

Q. May I ask what year that was?

A. That would be 1934 or 1935. I worked a few months in the building on McGee, and then we transferred over to [fol. 6317] the Corrigan Building, and it was my first instructor when I first come over there.

Q. What year was it you moved from the Coca-Cola Building to the Corrigan Building?

A. I don't have reference to the Coca-Cola Building. They had a small factory on McGee Street, at about Twenty-sixth and McGee.

Q. And you say it was in 1934 or 1935 that this occurred? A. Yes..

Mr. Lane: The intervener moves to strike all of the testimony with reference to that incident for the reason that it is prior to the effective date of the Wagner Act and is in no way binding upon the intervener.

Miss Weyand: I shall ask the witness next whether the instructors' duties and authority in that respect changed, so far as she knew, at any time prior to July 15, 1939.

Trial Examiner Batten: Of course, that hasn't anything to do with the objection.

Miss Weyand: I think it has, because—

Trial Examiner Batten: Did you start to make an objection, Mr. Ingraham?

Mr. Ingraham: Respondent makes the same objection.

Trial Examiner Batten: It may stand.

By Miss Weyand:

Q. Do you know whether at any time prior to July 15, 1939, the instructors' authority was lessened so that an [fol. 6318] instructor could not do what Grace Gnotta did to you on that occasion? A. Never.

Q. By that you mean you do know about it, whether it was lessened, do you?

A. It wasn't lessened.

Trial Examiner Batten: Just a moment, now.

Let's have the question and the answer read.

You mean you don't understand your own question; is that what you mean, Miss Weyand?

Miss Weyand: I should have asked that the question be read. I don't think the answer was responsive to the question.

Trial Examiner Batten: We will have the question and the answer read, and see.

Read the next to the last question and answer.

(Thereupon the next to the last question and answer were read by the reporter, as follows:

"Q. Do you know whether at any time prior to July 15, 1939, the instructors' authority was lessened so that an instructor could not do what Grace Gnotta did to you on that occasion?"

"A. Never."

By Trial Examiner Batten:

Q. What do you mean by "Never"?

A. Because there was another incident happened to me [fol. 6319] in 1939, when I—

Q. No, I asked you, what did you mean when you answered "Never"?

A. Their authority was never lessened.

Miss Weyand: Will you tell us about the incident in 1939 you started to mention?

Mr. Lane: What time in 1939?

The Witness: I can't say. It was while I was on the committee as chairman.

Mr. Lane: Was it before or after July 15?

The Witness: I couldn't say.

Mr. Lane: I object for the reason, then, that the witness is unable to identify the time in 1939, so that we are able to determine whether it was before or after July 15.

Trial Examiner Batten: Well, of course, if the time cannot be placed, it wouldn't be of any value, unless—

Miss Weyand: It is illustrative of the instructors' authority, and it did not change around that time. I think the incident is appropriate, regardless of whether it is placed as to—

Trial Examiner Batten: Well, I know your position, because you have stated that before. I think your position is the same as Mr. Hogsett stated the other day, but, of course, I do not agree with your position.

By Miss Weyand:

Q. Were you ever a chairman in the Donnelly Garment [fol. 6320] Workers' Union?

A. I was.

Q. When were you elected as a chairman?

A. It was the last of April 1938.

Mr. Ingraham: Will you please read the question?

(Thereupon the last question was read by the reporter.)

Miss Weyand: How long did you continue to be a chairman?

A. Active, for about six months, I would say, and I refused to carry on after that time.

By Trial Examiner Batten:

Q. Well, do you remember when you were elected?

A. Well, it was the last of April, because the first of May we really was taking off.

Miss Weyand: What year was that?

A. 1939.

Mr. Langsdale: Pardon me. I understood the witness to say "1938" before.

The Witness: 1939.

Trial Examiner Batten: I understand she was a committee chairman in 1939.

The Witness: Chairman on the committee.

Mr. Langsdale: Will you get her former answer, Miss Reporter?

Miss Weyand: She had said "1938," but she is saying [Vol. 6321] now "1939" in correction.

Mr. Langsdale: I just wanted to be sure it was a correction.

By Miss Weyand:

Q. How were you notified of meetings of Dornelly Garment Workers' Union chairmen?

A. Rose Todd called the section I worked in and my instructor delivered the message, or the basket boy, the bundle boy, or whatever it is—would bring a message through the section, an i. d. m., signed "Rose Todd"—one way or the other.

Q. Did your check from the company include pay for the time you spent at chairmen meetings?

A. It did. Rose Todd told us to turn in the time.

Q. How did you turn in your time?

A. I wrote it out on paper and signed my name and gave it to my instructor and she O. K.'d it.

Q. Do you know what rate of pay you were given for the time you spent at meetings?

A. According to my guarantee.

Q. Do you know whether girls are paid for the time they spend in making repairs?

A. Well, that was an argument, too, while I was on the committee.

Q. Will you explain the situation in that regard?

A. The girls, of course, on piecework, when they rose time, I considered that was plenty sufficient for repairs, [fol. 6322] and at one time there was a rumor through the factory that they were going to take out for repairs from girls who did not make their guarantee, and I objected to that. I said, "I don't believe they will do such a thing." And in just a very short while they did begin that practice.

Immediately I went to Rose Todd, the chairman of our union, and objected strenuously about that, and I asked her who authorized such a thing, and she said, "Mrs. Reed did." And I told her I would not believe that from her—unless Mrs. Reed told me herself, I wouldn't believe it from anyone. And she and I sort of argued about it, and she said, "Well, maybe we had better talk to Mrs. Reed about it, herself." And I said, "Go ahead."

Q. Did you ask Rose Todd to take the matter up?

A. I certainly did. I asked her if she, as chairman of the union, was going to stand for such a thing. And she said, maybe they had been a little hasty in that. And I said, "Rose, don't you think this has broken our contract?" And I said, "Whoever authorized that should put on our check stubs what that was taken out for." I said, "Why haven't they done so?" And she said, "Well, the girls would understand what it was taken out for." And I said, "Certainly, they would know— They know what the social security is taken out for, and the insurance, and the union dues, and all, but it's stamped on our check stubs."

[fol. 6323] Mr. Reed: I move to strike out the answer of the witness as being mere hearsay, incompetent and immaterial, and binding on no one.

By Trial Examiner Batten:

Q. When was this, do you know?

A. Right at the Donnelly Company—

Q. No. What time? The year, or the month?

A. In 1939, when I was on the committee.

Q. Was it before July 15, 1939?

A. I certainly think it was. I wouldn't say for sure, but I believe it was.

Trial Examiner Batten: Now, Senator, your objection?

Mr. Reed: I move to strike out the answer of the witness because it relates to a conversation between her and Miss Todd, the president of the union, and is in no manner binding upon the respondent in this case, and is incompetent and immaterial.

Trial Examiner Batten: Well, there are two things about it I don't understand. First, how is it rebuttal?

Miss Weyand: I hadn't finished the line of questioning. I was leading up to a matter which pertained to an instructor's authority over the girls.

[fol. 6324] Mr. Langsdale: I think it is rebuttal of their evidence that they continued to belong to the union of their own free will and accord, when the chairman of the union testifies to something that carries with it the inference that the union was functioning. The witnesses testified they not only joined of their own free will and accord, but they remained members—the union was functioning. Certainly, this witness, who was one of their committee-chairmen—

Mr. Reed: The testimony that Mr. Langsdale refers to is that the person remained a member of the union of their [fol. 6325] own free will and accord. Now, he proposes to rebut that by showing that there was some dispute between one of these chairmen and the president of the union. That doesn't meet the question.

Miss Weyand: That is not what I propose to show by this witness—Senator Reed's statement isn't. I think, if you will allow her to continue telling her story, you can then determine whether or not it is proper rebuttal.

Mr. Lane: Under your ruling that no matters are to be inquired into that are subsequent to July 15, 1939,—and certainly the intervener has been so prohibited—I think it is incumbent upon the Board, to make anything admissible on that ground, to show that the incident refers to a date prior to that time.

Trial Examiner Batten: I understood the witness to say she was certain it was.

Mr. Lane: No. She said she wasn't certain.

Trial Examiner Batten: Miss Witness, what did you say when I asked you if this was prior to July 15, 1939?

A. I said I'm almost certain. I'm not positive, but I'm almost certain.

Mr. Lane: In view of that doubt and inability of the witness to fix that time, I think it isn't admissible.

Trial Examiner Batten: I think I will receive it on the same basis I have received other testimony where the witness [fol. 6326] thought it was prior to July 15, 1939.

You may proceed.

Miss Weyand: Will the witness continue telling the story?

[fol. 6327] A. (Continuing) Miss Todd and I argued about this incident. And I told her I wouldn't believe that from anyone, unless Mrs. Reed told me herself she authorized such a thing. And she said, "Maybe you can talk to Mrs. Reed yourself about it." I said, "I certainly will." She said, "I will see if I can get you an appointment." And I said, "I will get one myself." And I did get an appointment with Mrs. Reed later, and Mrs. Reed admitted that she did that thing, and I apologized to Rose Todd for what I said to her.

By Miss Weyand:

Q. Did you continue to attend meetings of the Donnelly Garment Workers' Union?

A. No. Just a day or so after that I turned my contract back to Rose Todd and I told her I didn't want a thing to do with it.

Q. Did anyone tell you you were to continue going to meetings?

A. At one time. I told her I didn't want anything more to do with it. Then, when the next chairmen's meeting was called I refused to go down, and she called my section—Ada Vining was my instructor—and told Ada to ask me to come down, there was a chairmen's meeting on two—

By Mr. Reed:

Q. Did you hear that?

A. She called Ada Vining—

Q. I say, did you hear that?

[fol. 6328] Mr. Langsdale: I object to the interruption of the witness' testimony.

Trial Examiner Batten: I don't think there should be the interruption of the witness' answer, Senator.

Mr. Reed: Well, I don't think the witness should be allowed to ramble along here and—

Trial Examiner Batten: I think if you will let the witness answer, and then make your objection—

Read the answer, please.

(Thereupon the answer referred to was read by the reporter, as follows:

“At one time. I told her I didn't want anything more to do with it. Then, when the next chairmen's meeting was called I refused to go down, and she called my section—Ada Vining was my instructor—and told Ada to ask me to come down, there was a chairmen's meeting on two—”)

The Witness: I will correct that. It was on the first floor.

A. (Continuing) —and Ada delivered that same message to me three times, and at the last I said, “Well, I'll go down, but I'm taking no part in this affair.”

So, when I went down to the meeting I said to Rose, “I don't know what you want me here for.” And she told me

to calm down—I was mad about it. And I said, “Well, I’m just going to sit here, I’m not going to take any part in [fol: 6329] these meetings.” And she said, “Well, Bessie, aren’t you pleased with some of the things that are being done?”

Mr. Reed: I object to that as not responsive to the question at all. I would like to have the question read.

Trial Examiner Batten: You proceed, and then we will have the question read.

A. (Continuing) And I said, “Yes, with what is being done, but there isn’t nearly enough being done, Rose.” And I said, “From now on don’t expect me to do anything about it.” I said, “I’m through.” And I did—I really sat in from then on.

* * * * *

[fol. 6330] Trial Examiner Batten: These incidents you have related between you and Rose Todd and the meeting you attended, to which you say your instructor told you to go, were those all matters that occurred before July 15, 1939?

A. I can’t say. It was while I was on that committee, and that was in 1939. I haven’t any specific dates in my mind.

Trial Examiner Batten: Miss Weyand, some date will have to be fixed on that incident.

Mr. Langsdale: Well, if the Examiner please, I think the date is fixed, of her conversation with Mrs. Reed, as occurring, according to her best judgment, prior to July 15.

[fol. 6331] Trial Examiner Batten: That is right. But I asked her about this other matter, this subsequent matter, where the instructor told her she was to go down to the meeting.

* * * * *

By Trial Examiner Batten:

Q. You have no recollection as to when in 1939 that was; is that right?

A. No, I don’t.

By Miss Weyand:

Q. That was shortly after the incident with Mrs. Reed, was it?

A. That was before I talked to Mrs. Reed.

Q. That Ada Vining notified you about the meeting?

A. Pardon me. It was after.

Q. How long after?

A. I just couldn't say that.

Q. Did you continue to go—

A. It was soon after, because that was what thoroughly disgusted me with it.

Trial Examiner Batten: The question is, Miss Witness, do you have any idea whether it was before or after July 15, 1939?

The Witness: No, not offhand, without—

Trial Examiner Batten: Well, Miss Weyand, I don't think I can receive testimony on that basis; I haven't thus far, and I don't propose to do it now.

Miss Weyand: Do you know whether this incident that [fol. 6332] you started to tell about—

Mr. Langsdale: Pardon me. Do I understand you are striking it out, then?

Trial Examiner Batten: I haven't yet. I have told Miss Weyand I do not propose to accept it, which means I am going to, unless some date is indicated with respect to it.

Miss Weyand: Do you know whether this incident I started to ask you about with regard to receiving difficult work because of complaints of girls occurred before July 15, 1939?

A. I feel rather sure that was in the spring of 1939, for this reason, that we was working on light dresses, and that was— I absolutely know that Rose Todd and Mary Copewicz framed two other operators and myself, because I caught her on it right after it was done.

Now, may I proceed to tell—

Mr. Lane: I move to strike out the answer as not responsive to any question, and for the further reason that it is a mere conclusion of the witness.

Trial Examiner Batten: Will you read the question please?

Mr. Read: I would like to add, it is incompetent and immaterial and not redirect examination, and join in Mr. Lane's objection.

Miss Weyand: I will ask another preliminary question.

[fol. 6333] Trial Examiner Batten: Just a moment. I want to hear the question. Will you read the question, please?

(Thereupon the last question was read by the reporter, as follows:

"Do you know whether this incident I started to ask you about with regard to receiving difficult work because of complaints of girls occurred before July 15, 1939?")

Trial Examiner Batten: What was the answer about the date?

(Thereupon the last answer was read by the reporter.)

Trial Examiner Batten: In other words, that would be in the spring, because you were working on light dresses?

A. Yes.

Trial Examiner Batten: Are you through with this?

Miss Weyand: No. These things all tie into—

Trial Examiner Batten: I mean, the incident I said I was going to strike the testimony about.

Miss Weyand: No. These are all a part of what I am getting to.

Trial Examiner Batten: Unless you determine a date of some kind, I will strike it.

Miss Weyand: You are not striking it now?

Trial Examiner Batten: Yes, I am striking it, unless a date is set. If a date is set, it will be reinstated. I don't want to have to keep track of all of those things.

[fol. 6334] Miss Weyand: Will you state the incident with respect to Mary Copowycz and Rose Todd that you started to state?

A. Well, I had made numerous complaints about the joining section and the collar section, particularly. The system we had, it just seemed it didn't work out properly for the last two operations on that dress and it just held us up. And I took it up with Rose Todd several times. Our whole section even went to Mr. Baty's office on one occasion and tried to explain to him the reasons we couldn't make it. It didn't seem to be as much the price, or any of those things, as the way the work was coming to us, the way it was given out, and so on.

I suppose Rose Todd got tired of hearing about it, because evidently she was going to show me they could make their guarantee if they tried.

Mr. Lane: I move to strike out the part of the answer about "evidently she"—

Miss Weyand: I wish you would wait until she finishes her answer.

Trial Examiner Batten: Finish your answer.

A. (Continuing) So Rose Todd come to the section and talked to Mary-Copowycz, up by the bin. They would look toward my machine every once in a while, and I made a remark to these two operators—and I can present them, if necessary—that, "There must be something wrong." [fol. 6335] And I said, "We'll soon find out." And almost immediately Mary Copowycz began putting a very difficult operation—something none of us could make any money on—in my—we called it "horse"—it's where they put the bundles you work on.

And these other two operators, because they had always been friendly to me—almost the entire week we got that same work. Well, of course, we fell down. We knew when we had it we was going to.

And work was given to all of the other operators that would build their wages up for the week.

So, after I thought they had had time to determine if they was going to make their guarantee that week, on my lunch period I went to the different machines in my section and inquired of these operators if they was making their guarantee that week.

Mr. Reed: I ask, Mr. Examiner, what is this in response to?

Trial Examiner Batten: If you will let the witness finish, Senator, I will try to determine.

Mr. Reed: But after the witness has plainly gone clear outside of the question, isn't it time to stop it, or do we have to hear it all, and then after it has been heard—

Trial Examiner Batten: You may go ahead.

A. (Continuing) One after another of those operators stated they were making it that week. Some of them [fol. 6336] stated it was the first time in weeks they had made it.

By Trial Examiner Batten:

Q. You mean, on the same—

A. Not the same operation we were doing, but it was difficult to handle. Some of it was priced better than others.

And Mary said that they got better work, to see if they could make it that week, to prove to me that I was wrong.

After the time went in, Rose Todd called me to her desk on the seventh floor, and she had three figures on paper before her. I knew what was coming, in my mind. And she said, "Bessie, I want to show you that these girls can make their guarantee if they try." She said, "Now, all but three in your section made their guarantee this week." And before she said another word, I said, "Yes, and I can tell you who those three operators were. One of them was myself." And she said, "Yes, it was." And I said, "I think that largest figure there is mine." And she said, "Yes, Bessie, it is."

I said, "Rose, I saw you and Mary Copowycz talking over at the bin. I knew at the time you was up to something." And I said, "Do you know, I inquired of these operators during the week if they was making their guarantee?" I said, "They have told me, in particular, some of them, that they hadn't made it in weeks and they all made it last week." I said, "You're right; I knew they was making it."

Mr. Lane: Now, has the witness finished, so that I can make an objection?

[fol. 6337] Miss Weyand: I would like to have the record show Mary Copowycz was her instructor at that time.

Trial Examiner Batten: Miss Weyand, what has this to do with rebuttal or the issues in this case? Here is a difference of opinion between a girl who works in a section and her instructor and Rose Podd. What does this have to do with the issues in this case—

Mr. Hogsett: With anything?

Trial Examiner Batten: —or with rebuttal?

Miss Weyand: It shows the authority of the instructors in the plant and the extent to which it affects the girls' freedom in the presence of the instructor.

Trial Examiner Batten: You mean, it shows that as assuming—that we assume that what this lady evidently felt, that these two people got together and framed her—

Miss Weyand: No. She stated the fact that she had work that week that was poor and the other girls had good work.

Trial Examiner Batten: Someone has to do the poor work, don't they?

Miss Weyand: I wanted to point out the instructor could decide who would do it.

Trial Examiner Batten: Well, this seems to be a long way around of doing it. And then the question is raised, whether this incident means anything.

Miss Weyand: I think it shows the power of the in-
[fol. 6338] structors in this plant, and for that reason I think it is admissible.

Trial Examiner Batten: I don't think it does, Miss Weyand, and I don't think it is rebuttal.

Mr. Lane: I move to strike out the entire answer of the witness.

Mr. Reed: We join in the motion.

Trial Examiner Batten: Well, of course, I presume you both would expect me to concur with you, wouldn't you?

Mr. Lane: Yes.

Trial Examiner Batten: If you had waited a minute, maybe I would have made the motion.

Miss Weyand, I am seriously considering it. Now, I have told you what I think about it. What have you to say about it?

Miss Weyand: I think, in view of the testimony of eight or nine girls, adduced over my objection, under the remand, as to whether or not they regarded the instructor as having any power to affect their wages or their conditions at the plant, this is proper rebuttal to show that another witness felt differently and to show the facts upon which she based her feeling and the facts from which she drew her conclusion as to the instructors' power to affect the girls.

Trial Examiner Batten: Mr. Langsdale, you were going to say something?

[Vol. 6339] Mr. Langsdale: Well, Miss Weyand about states my thought about it.

All of these witnesses testified the instructor was just another working girl, with no authority whatever over any of the sewing girls. Now, we have proved by other witnesses that the instructor was a supervisor with the power to give good work to some girls and bad work to others. This is just an incident of that.

Trial Examiner Batten: Mr. Langsdale, if I were convinced that this is an incident of that, I wouldn't consider striking it, but I am not convinced that it is an incident of that.

Mr. Langsdale: She testified Mary Copowycz gave her and two other girls poor work and gave the others good work. Now, certainly, that is proven, that Mary Copowycz had the power to do that. Now, her conclusion as to why Mary Copowycz did it may be pure embellishment, but the gist of it is that Mary Copowycz had the power to do it and did do it, and that is certainly rebuttal.

Mr. Tyler: Mr. Examiner, I wish to direct your attention to the fact that in the original hearing the Board spent many days, a large part of which was endeavoring to show that the employees were dominated by instructors and other employees of the company.

The respondent and the intervener then put on witnesses [fol. 6340] who said, "We don't think we are dominated, and we don't think they have any authority."

Now, to go back and say that the—for the Board to go back and say, "We will put on some more people who think the instructors were supervisory employees, and show incidents of that," is merely to repeat their case in chief. Perhaps there are thousands of incidents in the plant which will reflect one way or the other. In that case the intervener and the respondent should have an opportunity to answer that all over again.

Trial Examiner Batten: Mr. Tyler, I am not considering it; I don't think, from the standpoint you just brought up.

Mr. Langsdale: May I say a word in reply to Mr. Tyler's argument?

Trial Examiner Batten: Yes. I will hear you all.

Mr. Langsdale: I objected to their opening up their defense in chief when they put eleven witnesses on to say that the instructor had no authority. If this is no part of our rebuttal, it was certainly no part of their case on the remand.

Trial Examiner Batten. Mr. Langsdale, I am not saying you haven't a right to rebut it, because all of the witnesses thus far I have permitted to testify about the instructors and whether they were supervisors, over the objection of the intervener and the respondent, and they have had a continuing objection to that.

[fol. 6341] Mr. Langsdale: And you let them do it over our objection.

Trial Examiner Batten: But on the basis of that ruling which I have made as to other witnesses—The thing is, I can't see where this incident means anything.

Mr. Langsdale: I think it does sustain the Board's theory that the instructor was a supervisor.

Mr. Tyler: If the Examiner please, the witnesses Mr. Langsdale has mentioned being put on in this hearing were not put on by the respondent for the purpose of showing the instructor has no authority. They were put on solely in response to the direction of the Circuit Court of Appeals that they tell why they formed this union. Now, in telling why a certain latitude of reasons would certainly be allowed, which was for the Examiner to determine. But that doesn't mean that all of the things they might mention are to be again put in the case to be decided all over again. Cross-examination is proper to break down any reasons they may say they relied on in joining the union, but rebuttal is not proper to meet those reasons, unless they present something entirely new, and the matter of the authority of the instructors certainly is not new.

Trial Examiner Batten: Well; we will recess until a quarter after 4.

(Thereupon a 10-minute recess was taken.)

[fol. 6342] Trial Examiner Batten: I am just wondering if counsel understood me when I said a quarter after 4.

Mr. Langsdale: Personally I was watching the bench to see whether you were there or not. I came in as soon as I saw you.

Trial Examiner Batten: I am going to strike the last answer. It certainly hasn't any value in its present form, that is certain.

Let's proceed.

Mr. Langsdale: What did you do? Did you strike it?

Trial Examiner Batten: What is it?

Mr. Langsdale: I didn't get your ruling.

Trial Examiner Batten: I strike it.

And I think I interrupted you, Miss Weyand, on the following question. Do you have it, Mr. Reporter?

The Reporter: No. That was reported by Mrs. Creel.

Trial Examiner Batten: Do you want the question, Miss Weyand, the question and the answer that I struck, and the following question?

Miss Weyand: No, I'll drop that subject, I think.

By Miss Weyand:

Q. Were you a member of the Loyalty League?

A. I was.

Q. Did you have a pin?

A. I have.

Q. Do you remember how you got your pin?

[fol. 6343] A. My instructor gave it to me, — I bought it, rather, and she delivered it to me.

Q. Do you know Mrs. Gray?

A. I do.

Q. Who is she?

A. She was manager of our outside store.

Mr. Langsdale: I didn't get the answer.

A. She was manager of our outside store, to my knowledge.

By Miss Weyand:

Q. How do you know she is the manager?

A. Well, we always had to see Mrs. Gray if we wanted anything in the store, to see Mrs. Gray, and when it was remnant bundles, she would send i. d. m.'s, and say it was the remnant bundles.

Mr. Reed. I can't understand the witness.

Trial Examiner Batten: Will you read the answer, please?

(Thereupon the last answer was read by the reporter.)

A. And her signature was on the i. d. m.

Mr. Lane: Now, I move to strike out the answer that Mrs. Gray was manager of the store, for the reason it is a mere conclusion; and the following answer of the witness doesn't state any facts upon which the conclusion can properly be based.

Trial Examiner Batten: It may stand.

By Miss Weyand:

Q. How long has Mrs. Gray been the manager of the store?

A. As long as I was there.

[fol. 6344] Q. Did you know Sylvia Hull?

A. I did.

Q. Do you remember the last day she worked at the plant? A. I do.

Q. Was she on the same floor with you that day?

A. She was.

Q. What happened?

A. Well, when I came in to work that morning, there was quite a number that had newspaper clippings with Sylvia's picture on those clippings, and that is the first I knew of it, and they said, "And she even came in to work this morning," and I was very much surprised; and I went over in the section where Sylvia was working, Miss Allison's section, and Sylvia was crying and trying to work, and Miss Allison was standing at the end of the section crying.

Mr. Reed: I couldn't hear the last of that.

A. Miss Allison was standing at the end of her section crying, and I stayed around there for a while, and I talked to Miss Allison for a minute or so, really sympathizing with her because she was crying; and then I went back to my section; but I don't think any of us worked for some time.

By Miss Weyand:

Q. Did people from other floors come up there?

A. Yes, I saw Ella Mae a time or two; there was others, but I didn't particularly know them.

Q. And by Ella Mae you mean who?

[fol. 6345] A. Well, she was the girl in the office; and the reason I remember that, I thought probably Ella Mae was—

Q. (Interrupting) What is Ella Mae's last name?

A. Hyde.

[fol. 6349] By Miss Weyand:

Q. Did you consider the Donnelly Garment Workers' Union a company dominated union, or a company union?

A. I did.

Mr. Lane: I object to that as calling for a conclusion of the witness.

Trial Examiner Batten: She may answer. A. I do.

Miss Weyand: Why do you?

Mr. Langsdale: Pardon me, I didn't hear that.

Mr. Ingraham: Respondent makes the same objection.

Trial Examiner Batten: Overruled. As I recall, you both have a continuing objection.

Mr. Ingraham: Yes.

Miss Weyand: Will you tell us why?

Trial Examiner Batten: You may tell us.

A. Because it seemed it never done any good when you [fol. 6350] took grievances up with that committee; I never did get anywhere when I was on the committee, and everything went just as the company seen fit.

Trial Examiner Batten: Miss Weyand, what is that in rebuttal of, the statement the witness just made?

Miss Weyand: The conclusionary statements by witnesses offered by the company, that the union was organized, formed, and run by the girls.

Mr. Lane: Wasn't that a part of the main case?

Miss Weyand: Well, at the main case, the Trial Examiner was not operating on a theory that such conclusionary or opinion evidence of employees was material; with the Court remand saying that such evidence should be taken, we are in the position of the company putting in such evidence, and the Board's not having put it on because of this theory of law under which the same case was tried.

Trial Examiner Batten: I will let it stand.

Miss Weyand: Did you attend a meeting in March—

Mr. Ingraham: (Interrupting) Do I understand counsel to mean now that it is material to go into what the plant union did accomplish?

As I recall, counsel objected to those matters when we were putting on our witnesses.

Miss Weyand: I don't recall the objection of which you speak. Would you be more specific?

[fol. 6351] Mr. Ingraham: Well, as I recall, objection was made to whether the union was the preference of the employees, what the union had accomplished, why it was their preference.

Miss Weyand: I don't recall any objection to any such questions, that you weren't allowed to state that.

Mr. Ingraham: That is my recollection.

Trial Examiner Batten: Well, of course, the record will indicate. I sort of had that recollection myself.

Mr. Tyler: Of course, the union itself was not allowed to put on any witnesses whatever which would—

Trial Examiner Batten: (Interrupting) Well, Mr. Tyler, I don't presume that that is correct; at least, that is not my position, but if that is yours, why, the record should indicate it.

We will proceed.

By Miss Weyand:

Q. Did you attend a meeting in March, 1937, at which Mrs. Reed spoke? A. I did.

Q. How were you notified of that meeting?

A. Well, if I remember right, it was the same as it was when our union was organized.

Q. And that was how?

A. By our instructor.

Q. What time of day was the meeting held at which Mrs. Reed spoke?

A. I don't remember the exact time. I can't say the [fol. 6352] exact time.

Q. Was it during working hours or after working hours?

A. Yes, it was during working hours.

Q. Did you wear your uniform to that meeting?

A. I just don't remember if I did or not, that particular meeting.

Q. What do you recall that Mrs. Reed said at the meeting?

A. Well, that she would stand by us girls if we stood by her, and that—

Mr. Langsdale: (Interrupting) Will you speak a little louder?

A. That she would stand by us girls if we stood by her, and that no one was going to run her plant, no buttinsky or 'sky, rather. She just explained that she was giving us the impression we would be protected in case of violence that was happening in other plants. That is about all I can remember of the exact words.

Q. Did you ever work in a section of the plant for a period of time and then move to another section, and the section number which appeared on your check stub was not changed for a period of time? A. I did.

Miss Weyand: I would like the court reporter to mark these check stubs Board's exhibits 39-A to 39-E inclusive for identification.

[Vol. 6353] (Thereupon the check stubs above referred to were marked as "Board's Exhibit No. 39-A to 39-E inclusive, Witness Weilert," for identification.)

Mr. Ingraham: I would like counsel to state the purpose of offering these stubs that are dated November, December, December, December, December, 1941.

Miss Weyand: Purely to show the practice of the company, in many cases, being very slow in changing the section number. I shall then ask the witness if that was the practice previously. It happens those are the only illustrations I have of check stubs with this witness.

We will try to put some others in that occurred during that period, with another witness.

Mr. Ingraham: Well, I object to proving that point by matters that are outside the time set by the Examiner.

Trial Examiner Batten: What have you to say about it, Miss Weyand?

Miss Weyand: Well, I think when I am proving merely a practice of the company in regard to having check stubs bear one section number and the girl actually be working, during a series of weeks for which the pay is covered, in

another section, that I can put on check stubs for any time, if there is a showing there was no change in the company's practice in that regard during the time involved.

Trial Examiner Batten: Well, doesn't that open up the [fol. 6354] whole thing to Mr. Tyler, to show there was no change in the conduct of the International Union prior, and then to a witness, after he has gone over the whole thing, and say, "Isn't that the same as it has always been?" What is the difference?

Miss Weyand: Because it has always been my theory that it has always been proper to prove something before by something that happens after.

Trial Examiner Batten: Well, you know the ruling I have made, don't you?

Miss Weyand: Well, I will offer this, then, and I will make an offer on that. I would like to say, in connection with the offer, that if the witness is willing to testify, will testify—shall I put it in this way, rather than to have her state what appears on these check stubs?

Trial Examiner Batten: Yes, you put it on.

Miss Weyand: That the handwriting which appears in the upper right-hand corner of Board's exhibit 39-A for identification, was on the check stub when she received it, and that she received it in the section numbered in handwriting at the corner, No. 411, and continued to work in section 411 continuously from prior to November 28, 1941, until subsequent to December 26, 1941, and that during that period her check stubs for weeks ending November 28, 1941, December 5, 1941, December 12, 1941, and December 19, 1941, indicated that she was working in section [fol. 6355] 517, whereas she was working actually in section 411, where all the checks were delivered to her; and that only on the check dated December 26, 1941, did the actual change in section numbers appear, and on the check stub dated December 26, 1941, which is Board's Exhibit 39-E for identification, the change for the first time appears with the section number in the addressograph as 411.

Trial Examiner Batten: We will proceed.

Miss Weyand: That is all the questions I have.

Trial Examiner Batten: Mr. Langsdale?

Mr. Langsdale: No questions.

Trial Examiner Batten: Mr. Ingraham?

• Cross-Examination

By Mr. Ingraham:

Q. Mrs. Weilert, I understood you to say that you took a 14-months leave of absence in 1940.

A. It was about that long, to my memory.

Q. When was that?

A. It was about 14 months before I came back this last time; it was in—

Q. (Interrupting) In 1940 to 1941, is that what you said? A. Yes.

[fol. 6356] Q. And you worked how long?

A. Until March of this year.

Q. Of this year?

A. Yes.

Q. Now, at that time did you object to doing repair work?

A. I certainly did.

Q. You had objected for some time, is that a fact?

A. No, only once, that is when I quit.

Q. That is the only time you objected to repair work?

A. Never before did I ever refuse to do repair work.

Q. But at that time you did refuse to do it?

A. I did, and I quit.

Q. Now, I understood you to say that you had objected to having to do repair work without being paid.

A. I objected to them taking out of those girls' checks when they made less than the guarantee; that didn't sound sensible to me. They didn't take it out of the girls' checks who made over their guarantee, it was the ones who did not make their guarantee; and in my opinion and in my argument I couldn't see where our contract stood up, because the girls had no guarantee after that. Where was their guarantee?

Trial Examiner Batten: Well, Mr. Ingraham, isn't that a matter I struck out?

Mr. Ingraham: Yes, but the witness has just answered a question; Miss Weyand asked her whether she thought the [fol. 6357] Donnelly Garment Workers' Union was company dominated and she said—

Trial Examiner Batten: Well, I intended clearly—I thought I was not receiving those exhibits, and didn't I say on that question and answer that I wouldn't receive them?

Mr. Ingraham: I didn't understand you to say that. I thought the witness answered her question. Will you please go back—

Trial Examiner Batten: Oh, pardon me, Mr. Ingraham. I made a note here: "Q. Is the union company dominated and why," to be stricken, and I meant to strike it out before you started with your examination.

Mr. Ingraham: I see.

Trial Examiner Batten: I have a note here, I see it now.

Mr. Langsdale: What was the objection to that question, that caused you to strike it? I didn't hear it.

Trial Examiner Batten: Well, because I didn't think—the first question, of course, is purely a conclusion, Mr. Langsdale, but we have had plenty of conclusions all the way through, and the why raises the whole issue of grievances, and yesterday, when she related one incident, I struck that out, and I think I intended, in the prior hearing, on several occasions—

Mr. Ingraham: (Interrupting) Well, I think it is a question of conclusion, and the Examiner can't make an [fol. 6358] error to strike out.

Trial Examiner Batten: Well, I wasn't going along on it because of conclusions alone, but the answer is based entirely on the fact this lady—that there had been some grievances that hadn't been properly taken care of, and that was the primary reason for my striking out; but I notice now I had this note, and I meant to do it before.

Miss Weyand: I want an exception to that, and I didn't know, of course, before I released the witness, you were

going to strike that. I don't think her answer indicates it was purely a matter of grievance, not being settled completely, and I would like to have the answer read back to the Examiner.

Trial Examiner Batten: Mr. Ingraham, will you release the witness back to Miss Weyand, in view of the fact I have struck the matter?

Mr. Ingraham: Yes.

Trial Examiner Batten: You may proceed.

Direct Examination (Resumed)

Miss Weyand: Did you consider the Donnelly Garment Workers' Union an organization formed by the employees for their own benefit?

Mr. Ingraham: I object to that. The witness has already stated her basis for believing the union was company dominated.

Trial Examiner Batten: She may answer the question.

[Vol. 6359] Miss Weyand: Will the reporter read the question to the witness?

Trial Examiner Batten: Please read the question.

(Thereupon the last question was read by the reporter, as follows:

"Q. Did you consider the Donnelly Garment Workers' Union an organization formed by the employees for their own benefit?")

A. At the time it was formed, I did.

By Miss Weyand:

Q. Did you later change your opinion?

A. I did.

Q. What opinion did you then form?

A. That it was most certainly company dominated.

Q. What did you mean by "company dominated"?

A. They operated everything just to suit themselves. I don't know of any incident where the girls had anything to say about it—or the union had anything to say about it.

Q. When you say "to suit themselves," whom do you mean by that?

A. The company.

Miss Weyand: That's all.

Mr. Ingraham: Mr. Examiner, I contend that opens up this same question.

Trial Examiner Batten: I think it opens up everything, if anything has been closed.

Mr. Ingraham: Yes.

[fol. 6360] Trial Examiner Batten: Clearly.

Mr. Langsdale, do you have anything?

Mr. Langsdale: No.

Trial Examiner Batten: Mr. Ingraham?

Mr. Langsdale: What was the ruling?

Trial Examiner Batten: I say I think it does open up everything that has been closed, if I have been able to close anything.

Mr. Langsdale: I don't hear any motion to strike.

Trial Examiner Batten: Well, apparently there isn't any.

Go ahead, Mr. Ingraham.

Cross-Examination (Resumed).

By Mr. Ingraham:

Q. Now, Mrs. Weilert, you stated that when the union was formed you thought that it was an organization formed by the voluntary action of the employees?

A. Yes.

Q. And did you vote in favor of forming the Donnelly Garment Workers' Union?

A. Well, yes. I don't know anything about unions, and if it was necessary, I felt that was what I should do.

Q. Did the violence at the other garment plants in 1937 cause you to feel that a plant union would protect the employees?

A. Well, I didn't know if it was the union that would protect us, that was a mystery to me; I didn't know any-

[fol. 6361] thing about unions, but I did feel like we needed protection if they came down there.

Q. And did, Mr. Tyler advise you that a plant union would; in a measure, protect the employees?

A. That's right.

Q. And did you take that into consideration when you voted?

A. I don't know as I took it into consideration or not; I thought if that was what was necessary, that was the proper thing to do.

Q. So you used your own judgment about the matter at the time?

A. That's right.

Q. Now, up to 1937 had you been satisfied in your work—

A. (Interrupting) Yes.

Q. (Continuing) At the plant?

A. Yes.

Q. And had you notified Mrs. Reed?

A. Mrs. Reed what?

Q. That you were satisfied?

A. Before 1937?

Q. Well, in 1937, had you notified Mrs. Reed that you were satisfied in your work?

A. Not directly, that I know of.

Q. Did you ever write her a letter?

A. Before 1937?

[fol. 6362] Q. No, in 1937.

A. In 1937?

Q. Yes.

A. No.

Q. Are you sure of that?

A. Positive.

Mr. Ingraham: Mr. Reporter, will you please mark this exhibit as respondent's exhibit No. 46?

(Thereupon the document above referred to was marked as "Respondent's Exhibit No. 46, Witness Weilert," for identification.)

Mr. Langsdale: I object to the letter. It is not the original, it is a copy. Show it to the witness.

Mr. Ingraham: I'll withdraw that.

By Mr. Ingraham:

Q. Do you recall writing a letter?

A. In 1939.

Q. In 1937?

A. 1939.

Q. Well, I'll hand you exhibit 46, respondent's exhibit No. 46, and ask you if you recall writing such a letter.

A. I did not.

Q. You did not?

A. I did not, positive.

Mr. Ingraham: I would like to get the original of this letter right now.

A. I wish you would.

[fol. 6363] Mr. Ingraham: Will you recess for about 5 or 10 minutes?

Trial Examiner Batten: Well, is that all the longer it will take?

Mr. Ingraham: I think so.

Trial Examiner Batten: It seems you should have had the original here before you were going to present it to the witness.

Mr. Ingraham: I thought the witness would recollect writing this letter.

Mr. Hogsett: It is of no great delay, it is only a hundred feet from this courtroom. It is a record we are not at liberty to bring here, but we will have the clerk take it out.

Trial Examiner Batten: Well, we will recess for 10 minutes.

(Recess was accordingly taken.)

Trial Examiner Batten: We will proceed.

Mr. Ingraham: Will you read the last question and answer?

(Thereupon the last question and answer were read by the reporter, as follows:

"Q. Well, I'll hand you exhibit 46, respondent's exhibit No. 46, and ask you if you recall writing such a letter.

"A. I did not.

"Q. You did not?

[fol. 6364] "A. I did not, positive.")

Mr. Ingraham: Mr. Reporter, will you please mark this exhibit?

(Therenpon the document above referred to was marked as "Respondent's Exhibit No. 47, Witness Weilert," for identification.)

Mr. Ingraham: I will hand you now respondent's exhibit No. 47, which is the original of exhibit No. 46, which you just testified about,—

Mr. Hogsett: Let her compare that with the copy.

Mr. Ingraham: (Continuing) —and ask you if that is a fact?

Mr. Langsdale: And ask you what?

Mr. Ingraham: If Exhibit 46, which she has just testified about, was a copy of exhibit No. 47.

A. That is not my signature.

Mr. Ingraham: Is this your signature to that affidavit?

A. That is my signature, but I don't know how it got on there.

Mr. Hogsett: Take that away from her and have her write the entire thing in her own handwriting right now.

Mr. Langsdale: I object to that, and I think she is not required to make any such asseveration.

By Mr. Ingraham:

Q. (Interrupting) Is this a letter in your handwriting? [fol. 6363] A. It is not; but this is my signature.

Q. On the affidavit? A. On this, yes.

Q. Now, will you please write what is contained—

A. (Interrupting) Yes, I will.

Q. (Continuing)—in this exhibit?

A. Yes, I will.

Trial Examiner Batten: Just move up to the table, Mrs. Weilert.

(Thereupon the witness wrote as requested.)

By Mr. Ingraham:

Q. (Reading) "Kansas City, Missouri, July 15, '37. To whom it may concern:

"During the past 4½ years—"

A. (Interrupting) Four and a half?

Q. 4½ years. (Reading) "I have been employed as operator by the Donnelly Garment Company."

Mr. Langsdale: I submit the whole counsel table doesn't have to stand up and look over her shoulder while she is doing this, and one counsel is enough.

A. I am left-handed.

By Mr. Ingraham:

Q. Do you write with your right hand?

A. No, you couldn't read it if I did. I admit I am a little nervous writing here, but I can still sign my name, I think.

Q. Well, are you too nervous to write?

Mr. Langsdale: Just a moment. I object—

[fol. 6366] A. (Interrupting) No, I don't think so.

Trial Examiner Batten: Just proceed, Mr. Ingraham.

Mr. Ingraham: All right.

By Mr. Ingraham:

Q. (Reading) "Working conditions and salary have been very satisfactory and I am very well satisfied with my present employer. I do not wish to join any outside organization, and I feel that—"

A. (Interrupting) Outside organization?

Q. (Reading) "—any outside organization—"

A. I will just have to write that over if you read it.

Q. (Reading) "—and I feel that I have the right to use my own judgment in this matter. Yours respectfully, Bessie Weilert, 3930—"

A. (Interrupting) 3920, is it, or 3930?

Q. Well, this has got a stamp over it. I can't see, "Wabash."

A. Well, which is it, 3930 or 3920?

Q. 3930.

A. I don't live there.

Mr. Hogsett: It is '20.

Mr. Ingraham: It is '20.

A. It must be.

Mr. Ingraham: Will you please mark this as an exhibit?

(Thereupon the document above referred to was marked as "Respondent's Exhibit No. 48, Witness Weilert," for identification.)

Trial Examiner Batten: What is that, 48, Mr. Reporter?
[fol. 6367] The Reporter: Yes, sir.

Mr. Ingraham: Will you please pull your—let me push your chair up to the table again. Will you sign your name right-handed, please, on that table?

A. I sure will, if I can.

Trial Examiner Batten: Are you using the same pen?

Mr. Ingraham: No. Push up farther to the table.

A. I know when I was at school I had a terrible time, I couldn't write. I always wrote this way when I was in school, and they were trying to get me over that, I wrote backwards.

By Mr. Ingraham:

Q. You have written backwards right along?

A. In the first grade at school, but I can't write, and they had to let me write left-handed.

Q. And exhibit 48 was written with your left hand?

A. Absolutely. Any signature of mine would be with my left hand.

Mr. Ingraham: Will you just mark these, please?

(Thereupon the documents above referred to were marked as "Respondent's Exhibits No. 49-A through E inclusive, Witness Weilert," for identification.)

Mr. Hoggatt: Well, did she endorse the pay checks with the right hand or left hand?

Mr. Langsdale: Well, I object to the exhibits because [fol. 6368] she says she always wrote with her left hand.

By Mr. Ingraham:

Q. I will hand you respondent's exhibit 49-A and ask you if that is your signature in your hand-writing on a pay check from the Donnelly Garment Company, dated July 3, 1937? A. It is not my signature.

Q. It is not your signature? A. It is not.

Q. All right. At that time, on July 3, 1937, were you in section 413? A. In 1937?

Q. Yes.

A. Yes, I was in Lola Skeens' section.

Q. What was your time clock number, 14?

A. It must have been from that.

Q. And is that check made out to Bessie Weilert?

A. Yes.

Q. And cashed through the bank?

A. Where was that cashed at?

Q. One is the Union National Bank, the other is—

Miss Weyand: (Interrupting) May I see that a minute?

A. There is nothing I can explain, unless my husband made a payment on the house and signed the check, maybe I forgot to sign it or something; that is the only thing I know of. I used to send my checks about that time to the [fol. 6369] savings company where we were paying on our home. I used to just—most of the time I didn't cash them, I would sign them and send them down there.

Mr. Langsdale: I didn't hear that answer. Will you read it?

Trial Examiner Batten: Will you read it, please?

(Thereupon the last answer was read by the reporter.)

A. Or maybe at Katz', maybe I would cash them and send the money down there, or something of that sort.

Mr. Langsdale: You mean by that the banker may have signed your name on the back of the check?

A. No, I don't mean that. It may be my husband signed it, in sending it to the bank, they know him down there; but I didn't sign that.

By Mr. Ingraham:

Q. Is this your pay check? A. Yes.

Q. Well, who signed your name on the back?

A. I don't know, unless it is my husband, but I didn't sign that; that could be possible.

Q. Now, the number over your name, is that your social security number? A. I suppose it is.

Mr. Langsdale: That is immaterial. She admits that is her pay check.

Mr. Ingraham: All right.

[fol. 6370] By Mr. Ingraham:

Q. Now, I'll hand you respondent's exhibit 49-B and ask you if that is your pay check.

A. Yes.

Q. Now, is that your endorsement on the back?

A. Yes.

Q. It is?

A. Yes. It was a habit of mine to stop on my way home and cash my checks; of course, there might have been exceptions.

Q. I hand you respondent's exhibit 49-C. Is that your pay check? A. It is.

Mr. Langsdale: I think one counsel hanging over the witness is sufficient, and I ask one counsel be requested to take his seat at the counsel table.

Mr. Ingraham: I am not hanging over the witness, I am merely questioning the witness.

A. That is my signature.

By Mr. Ingraham:

Q. That is your signature on respondent's exhibit 49-C? A. It is.

Q. I'll hand you respondent's exhibit 49-D and ask you if that is your pay check? A. It is.

Q. And I'll ask you if that is your signature?

A. It is.

[fol. 6371] Q. I'll hand you respondent's exhibit 49-E and ask you if that is your pay check? A. It is.

Q. And I'll ask you if that is your signature?

A. It is. There is only one there that is not my signature, and that could be possible that it was signed by my husband.

Mr. Ingraham: Will you please mark this as an exhibit?

(Thereupon the document above referred to was marked as "Respondent's Exhibit No. 50, Witness Weilert," for identification.)

Mr. Ingraham: I'll hand you respondent's exhibit 50, and ask you if you made the writing on that page with your right hand. A. With my right hand, yes.

Mr. Ingraham: Now, I offer in evidence respondent's exhibits 47, 48, 49-A, B, C, D, and E, and 50.

Trial Examiner Batten: Any objections?

Miss Weyand: Well, I object to them being received, the one which is the letter she wrote; I don't object to the receipt of 48 nor 49-A, B, C, D, and E, nor 50. I understand those can be received, but I do object to the receipt of No. 47 in evidence until it is determined who wrote it, and the circumstances under which it was written.

Trial Examiner Batten: You mean the copy?

Miss Weyand: No.

Trial Examiner Batten: Did you say No. 47?

[fol. 6372] Miss Weyand: That is the original, purported original hand writing. I don't object to the receipt of the copy for what it is worth.

Trial Examiner Batten: The offer included all the exhibits?

Mr. Ingraham: I stated 47, 48, 49—

Trial Examiner Batten: (Interrupting) A to E.

Mr. Ingraham: Yes, and 50; and I am also offering respondent's exhibit 46.

Trial Examiner Batten: What would be the purpose of offering the copy, Mr. Ingraham?

Mr. Ingraham: Well, the witness said she didn't sign any such letter.

Trial Examiner Batten: Oh, I see. That is in relation to her testimony?

Mr. Ingraham: Yes.

The Witness: To my memory I did not.

Mr. Langsdale: I object to the offer of either 46 or 47 as not having been identified; therefore they are not competent.

Mr. Ingraham: Now, Mrs. Weilert—

Mr. Langsdale: Wait just a minute.

Trial Examiner Batten: Well, of course, I think they should all be received, but the question that is to be determined, I presume, is whether or not that is her letter, her signature.

[fol. 6373] Miss Weyand: I think they should be identified and not received in evidence until it is determined where those copies came from and what they are.

Trial Examiner Batten: Well, I will receive them in evidence in connection with this witness's testimony; and of course, any questions, I presume, will be determined as with respect to any exhibits. Of course, this exhibit 47 will be received, but we will have to have the original, I won't accept the photostat, because if the issue of the handwriting is an issue, of course I am not going to accept a photostat.

(The documents heretofore marked "Respondent's Exhibits 46, 47, 48, 49-A, 49-B, 49-C, 49-D, 49-E, and 50, Witness Weilert," for identification, were received in evidence.)

By Mr. Ingraham:

Q. I hand you respondent's exhibit 47, and ask you if you did sign your name on the affidavit?

A. I must have. That is my signature.

Q. Now, that is dated the 27th day of October, 1937?

A. October 27, 1937?

Q. Yes. A. Yes.

Mr. Langsdale: When?

Mr. Ingraham: October, 1937.

By Mr. Ingraham:

Q. Now, do you recall making that affidavit?

A. No, I don't recall making that, but that is my signature; and what is in the letter is the way I felt, that would be all right.

Q. You felt what was stated in the letter was all right?

A. Yes, I did.

Q. And so when you did sign the affidavit which stated: "I, Bessie Weibert, being duly sworn, state I wrote the attached letter of my own free will and that the facts contained therein are true;" that was a fact? A. Yes.

Mr. Langsdale: Wait a minute. Let's get the question. Just a minute—

Mr. Ingraham: She has answered.

Trial Examiner Batten: Just a moment. Let's have the question.

Mr. Langsdale: You hadn't finished your question when she started to answer.

Trial Examiner Batten: Wait just a moment. Let's have the question read.

Mr. Langsdale: Just a moment. I object to the question including that part of the affidavit in which she said she wrote the letter and which she says she didn't sign. If the question is only to get at the contents of the letter as to the way she felt, then I have no objection to it.

Trial Examiner Batten: What do you mean, Miss Witness, that the contents of the letter were true, or that you [fol. 6375] wrote the letter?

A. That is the way I felt at that time, yes, that I was pleased with my work.

By Trial Examiner Batten:

Q. You were referring to the contents of the letter?

A. Yes.

Q. And not to the fact that you wrote that?

A. No, I didn't write it.

By Mr. Ingraham:

Q. Why did you sign this paper?

A. That is what I don't know, that is what the mystery is to me.

Q. You have no recollection of it?

A. No, I do not.

Q. You have no recollection of being sworn?

A. No, I didn't sign that at that time; I know I would have, just that way. We signed a lot of things we didn't have to read.

Q. Now, this affidavit states: "I, Bessie Weilert, being duly sworn, state I wrote the attached letter."

A. Yes, I probably signed that.

Q. You signed that?

A. Signed a lot of things I didn't have to read, yes.

Q. And you swore to it?

A. Yes, I guess I did.

[fol. 6376] By Mr. Ingraham:

Q. So, Mrs. Weilert, in October, 1937, you were satisfied?

A. Apparently from that, if it was in October.

Q. Well, you stated—

A. (Interrupting) I was rather satisfied there until I was on the committee as chairman, that is when I could really see the unsatisfactory view of things, and then I wasn't satisfied.

Q. And that was in 1939? A. 1939.

Q. And I believe you stated you were elected on the committee in the spring of 1939? A. Yes, it was.

Q. Do you recall the month?

A. It was in April, it must have been.

Q. In April? A. Yes.

Q. And then how soon after that? A. Immediately.

Q. Immediately?

A. Afterwards, the first chairman meeting.

Q. And you think it was in the month of May?

A. Yes, I do.

[fol. 6377] Q. The early part of May?

A. Yes, I think so, I wouldn't say exactly.

Q. How often did you have meetings?

A. Well, if I recall it was once a week.

Q. Once a week?

A. I believe it was once a week.

Q. I didn't quite understand what you meant by "committee of chairmen." Was that a representative of the section?

A. That's right, for the operators. There were two representatives for the operators for that union.

Q. And you were one of them on the general executive committee?

A. Yes, I suppose that is what you would call it.

Q. Now, I'll hand you intervenor's exhibit No. 20.

Miss Weyand: I would like to, in order to expedite matters, ask if the company could undertake to produce a letter that was written in 1939, or search its files to see if they can find the letter.

A. It was not written, Miss Weyand.

Miss Weyand: It was not? A. I dictated that.

By Miss Weyand:

Q. And it was typewritten? A. Yes.

Q. It wouldn't show your handwriting, then?

A. No.

[fol. 6378] Mr. Ingraham: I hand the witness intervenor's exhibit No. 20 and refer to page 6076 of the Circuit Court record and ask the witness if her signature appears on that page.

Trial Examiner Batten: That is that rejected exhibit, is it not?

Mr. Ingraham: Yes.

A. Yes, that is it.

By Mr. Ingraham:

Q. That is your signature? A. Yes.

Q. Now, I'll ask the witness to read the writing that is on that page, please.

[fol. 6379] - A. I have finished.

By Mr. Ingraham:

Q. Do you recall making that affidavit?

A. When did you say it was, May—

Q. (Interrupting) May 31, 1939.

A. Is that the one where the Notary Public was in the auditorium?

Q. I don't know anything about it.

A. Where we were called in groups to sign that?

Q. I don't know a thing about it. I had nothing to do with it.

A. Well, I really only remember one time where a paper was notarized, and it was in the auditorium on the first floor, and if that is the paper, why, yes, I signed it.

Q. Now, it states in the affidavit: "Each signer further states that he or she has either read or had read to him or her the contents of this affidavit."

A. That was read to us, he read it to us, the notary public.

Q. Now, you have read this—

A. (Interrupting) Just now.

Q. (Continuing) —just now?

A. Yes.

Q. Now, were the facts you swore to at that time true or [fol. 6380] false?

A. It must have been awfully early in May if I felt that way.

Trial Examiner Batten: Well, it was in May, 1939.

A. Well, I didn't feel that way, no.

Mr. Ingraham: So you swore to something that was not true?

Mr. Langsdale: Just a moment. I object to that as argumentative. Her answer speaks for itself, and the affidavit speaks for itself. It is purely argumentative, and in an effort to—

Trial Examiner Batten: (Interrupting) Will you read the last answer, please?

(Thereupon the last answer was read by the reporter.)

Mr. Langsdale: I object to it for the further reason it is repetition. She said she didn't feel that way, and she did sign it.

Trial Examiner Batten: Please read the last question. (Thereupon the last question was read by the reporter.)

Trial Examiner Batten: You may answer.

Mr. Ingraham: She did.

A. It seems I did.

Mr. Hogsett: Just now she answered it: "It seems I did."

Mr. Ingraham: So, in 1939, under oath, you swore to certain facts—

Mr. Langsdale: (Interrupting) Just a moment.

[fol. 6381] Trial Examiner Batten: You haven't finished yet, have you?

Mr. Ingraham: No.

Mr. Langsdale: No, I say the witness shouldn't answer until I put in my objection.

By Mr. Ingraham:

Q. You swore to certain facts with respect to the formation of the Donnelly Garment Workers' Union that weren't true?

Mr. Langsdale: I object to that as repetition.

Trial Examiner Batten: It is entirely repetitious. She just got through saying, didn't she? If you want to ask her what part of the affidavit she considers not to be true, all right.

Mr. Ingraham: All right.

By Mr. Ingraham:

Q. I'll hand you the affidavit and ask you to state what was not true.

A. Well, I didn't consider that "wish" and "choice" correct. It wasn't our wish and our choice, it was just a matter of duty, I felt it was our duty to belong to that union, if that was what they wanted us to do. I can't

really say it was my wish and choice, but that it was necessary.

Q. What was the next item that was untrue at the time you swore to it?

Trial Examiner Batten: If any?

Mr. Ingraham: Yes.

[fol. 6382] A. I suppose that it is supposed to be a choice, and I just can't say it was a choice, it was more of a duty to me.

By Mr. Ingraham:

Q. What item are you referring to now?

A. Where it says: "We understand that there is in some quarters a disposition to question the fact that membership in our own union is our own voluntary choice, and therefore; for the purpose of establishing that fact to the satisfaction of the Labor Board, the public, the International Ladies' Garment Workers' Union, and any and all others who may be interested."

Q. Now, is that the only false statement that you swore to?

A. That is one.

Q. What other false statements did you swear to?

Trial Examiner Batten: Just a moment. The witness hasn't said they were false statements. Mr. Ingraham. She says they were untrue.

Mr. Hogsett: What is the difference?

Trial Examiner Batten: Well, why don't you use the witness's language?

Mr. Ingraham: I don't have to follow the language of the witness.

Trial Examiner Batten: Well, of course, I don't assume the use of the words, "false statement" is correct. The questions have been to this witness: what in here was untrue.

Mr. Hogsett: Does your Honor draw a distinction between "false" and "untrue"?

Trial Examiner Batten: It is immaterial whether I draw a distinction or not.

Mr. Langsdale: I draw a great distinction —

Trial Examiner Batten: (Interrupting) Just a moment. Unfortunately I think you two men will have to decide that matter.

A. When we signed this we were on our lunch period, we have a half an hour for lunch, or we did have, and when we were told to go to the first floor — this impressed me as something that hadn't been done properly; probably we had signed the same thing before, but it hadn't been done properly, and now was being notarized, and we rushed in there after lunch and rushed out, and goodness, I don't suppose — I know I didn't absorb half of this.

By Mr. Ingraham:

Q. So you now testify —

A. (Interrupting) That I didn't know the seriousness of this, if it is serious.

Mr. Langsdale: What is the answer?

Trial Examiner Batten: Will you read it?

(Thereupon the last answer was read by the reporter.)

By Mr. Ingraham:

Q. Is your memory better now, Mrs. Weillert, than it was in 1939, about those facts?

A. About these facts?

Q. Yes.

[fol. 6384] A. Well, I feel different than I did then.

Q. Yes. In May 1939 you felt differently than you feel now, is that a fact?

A. It could have been, maybe; I said if it wasn't the first it was mighty soon after the first meeting that I felt different about the union.

Q. So, at the time that affidavit was made you felt differently?

A. It could have been.

Q. And your feeling now is that the Donnelly Garment Workers' Union should have forced the company to pay for repairs?

Mr. Langsdale: Just a moment. I object to the word "forced" as not based on anything she said. All she said is: they should at least have made an effort to do it.

Trial Examiner Batten: Of course, I have stricken out that part, didn't I, about pay for repairs?

Mr. Ingraham: Well, I feel that Miss Weyand opened the whole door.

Trial Examiner Batten: You mean even the part I have stricken out of her testimony?

Mr. Ingraham: I feel so, yes. Miss Weyand went into —

Trial Examiner Batten: (Interrupting) We will proceed.

Mr. Langsdale: Now, I am objecting to the use of the word "forced" in there, as not based on her testimony. Her testimony was she thought the union should make an [fol. 6385] effort to do it. The word "forced" carries an entirely different interpretation.

By Trial Examiner Batten:

Q. Well, do you understand the question, Mrs. Weilert?

A. Well, I don't know if I do or not.

Q. Well, it is about that incident you related.

A. Taking out of their pay for repairs?

Q. Yes.

A. Well, it was something they never had done before in that way, to my knowledge.

By Mr. Ingraham:

Q. Well, how had it been done before?

A. Well, lost time, that is all I ever knew of, that they lost time seemed sufficient.

Q. Well, Mrs. Weilert, wasn't it a fact the company paid operators to perform certain particular work, and if an operator performed that work in such a way that the company was obliged to have it done over, then the operators hadn't performed what they were hired to do and wouldn't be entitled to be paid for that?

Mr. Langsdale: Just a moment. I object to the question as argumentative.

Trial Examiner Batten: Will you read the question?

Mr. Langsdale: The issue as to whether Mrs. Weilert was right or wrong isn't here. The issue that is here is, did

she protest against it, and was she dissatisfied on that account.

[fol. 6386] Trial Examiner Batten: Will you read the question, please?

(Thereupon the last question was read by the reporter, as follows:

"Q. Well, Mrs. Weilert, wasn't it a fact the company paid operators to perform certain particular work, and if an operator performed that work in such a way that the company was obliged to have it done over, that then the operators hadn't performed what they were hired to do and wouldn't be entitled to be paid for that?")

Trial Examiner Batten: You may answer.

A. Well, she still had a guarantee. I suppose those mistakes were allowed for, they must have been.

By Mr. Ingraham:

Q. Well, do you feel, Mrs. Weilert, that if you performed an operation in such a way that it has to be done over, the company should pay you for that?

Mr. Langsdale: Just a minute. I object to the question as argumentative, purely. The witness had based her opposition to that requirement of the company on her contract which guaranteed so much per week, and as I understand her testimony, when this was taken out, then her guaranteed contract was broken, and that was what she said, and that's all.

Mr. Ingraham: Now, I would like to have the witness answer my question.

Trial Examiner Batten: Will you read the question?

[fol. 6387] (Thereupon the last question was read by the reporter, as follows:

"Q. Well, do you feel, Mrs. Weilert, that if you performed an operation in such a way that it has to be done over, the company should pay you for that?")

Trial Examiner Batten: You may answer.

A. When you are on piece work, I feel the time you lose — no girl ever makes mistakes deliberately — because

she loses time when she does that over, it is a loss to her or sometimes it is to the company; and I always thought it was allowed off. Of course, if the girl is intolerable, they should fire her, I think they have the right to fire someone if they don't do the work the way it should be done, but I don't think they have the right to take that out of a set guarantee.

Q. Didn't you have quite a bit of repair work?

A. I didn't have. I had no more than the average.

Q. But you did have repair work?

A. I have had repair work, and I have always done it willingly.

Q. And have you personally complained about your own repair work?

A. I did when I quit, yes. I suppose I have made little remarks about it, probably, about it not being my operation, or something, but I did particularly when I quit.

[fol. 6389] By Mr. Ingraham:

Q. Mrs. Weilert, I show you the signature, the endorsement, on respondent's exhibit No. 49-A, which you say is in your husband's handwriting, and ask you if that isn't the same signature that is on respondent's exhibit No. 47.

A. That's what I think it is.

Q. You think your husband wrote that letter?

A. Yes, I do. I think he did, and I had forgotten about it.

Q. And the facts in the letter are true, I think you testified?

A. Yes.

Q. And you told your husband to write that letter?

A. I probably did. I had forgotten about it entirely, though.

[fol. 6390] Q. And it was written at your home?

A. It must have been.

By Mr. Tyler:

Q. Mrs. Weilert, you were elected to the committee of representatives of the Donnielly Garment Workers' Union in April 1939, were you not?

A. I think that's the date.

Q. That was about two years after the union had been formed, approximately?

A. Yes.

Q. And at the time of your election you believed the union was representing the wishes and the interests of the employees?

A. Yes, I did.

Q. And you attended the meetings of the committee held after you were elected to the committee of representatives, did you?

A. Yes, I did.

Mr. Hogsett: Mr. Tyler, may I interrupt a moment?

Mr. Tyler: Yes.

Mr. Hogsett: Mr. Examiner, in view of the testimony of the witness given to the last of Mr. Ingraham's cross-examination, do you now think it necessary that we go through the requirement of having this original letter withdrawn?

[fol. 6391] I suggest this as a reason why you may not think it is necessary: It appears now that the letter, according to the best knowledge of the witness, is in the handwriting of her husband, written at her home, at her request. Now, for all practical purposes, that is all we care about. It represented her views and communicated them to the company, at her request, so that the signature and the handwriting are no longer important.

Mr. Langsdale: You raise no further question about that?

Mr. Hogsett: No. I am convinced—

Trial Examiner Batten: If you raise no further question about that, there is no need. I would say, however, that you have a photostat.

Mr. Hogsett: Oh, yes, just like all exhibits.

Trial Examiner Batten: If you have two photostats made, so that there will be one for—

Mr. Langsdale: I think the exhibit of the writing here this morning should be stricken. In other words, there

is going to be no point raised about whether or not this is in her handwriting; this exhibit No. 47?

Mr. Hogsett: I think now that is true.

Trial Examiner Batten: Then, why don't counsel agree on the withdrawal of any of these exhibits you do not now think necessary?

Mr. Hogsett: Let it be by agreement understood that all [fol. 6392] of the exhibits which Mr. Ingraham exhibited to Mrs. Weilert with the view of testing the accuracy of her testimony on the subject of the handwriting in this original letter be withdrawn.

Trial Examiner Batten: That is respondent's exhibit No. 48. Now, I don't know whether I want to have them withdrawn—

Mr. Hogsett: For this reason, that it is now apparently no longer in issue that the letter was written by Mrs. Weilert's husband, at her home, at her request, and truly represented her views. Now, that being true, whether she wrote it personally is just wholly immaterial.

Trial Examiner Batten: That is true. But whether they should be withdrawn—I still think—

Mr. Hogsett: You mean—

Trial Examiner Batten: I mean physically withdrawn. I have no objection, Mr. Hogsett, if you will provide photostats of those, and photostats of those of which there is only one copy, and then have the record show they are withdrawn. I don't want them withdrawn physically. I want them in the record.

Mr. Langsdale: Why shouldn't the record be cleared of them completely?

Mr. Hogsett: Which way do you want it? We are agreed to anything.

[fol. 6394] Mr. Hogsett: I will state my personal belief, that this letter, exhibit No. 47, was actually written by Mrs. Weilert's husband, as she says it was.

Mr. Langsdale: Do you agree to that, Mr. Tyler?

Mr. Tyler: If the evidence shows that is a fact.

Mr. Hogsett: I think that is a fair inference from this check that she says she endorsed.

Mr. Tyler: I made no study of the comparative handwriting, but I am willing to let that stand.

Mr. Langsdale: All right.

Trial Examiner Batten: Then, that may stand. And you will, then, have photostats made in the usual way?

[fol. 6395] By Mr. Tyler:

Q. After you were elected to the committee did the [fol. 6396] Donnelly Garment Workers' Union pay committee members for any expenses they incurred in connection with work for the union or time lost for the union?

A. You mean my time that I spent—

Q. I mean, any members of the committee. Were they paid by the union for time lost?

A. I never seen or had read to me any report of such. They might have, but I never had read to me or seen any report of it.

[fol. 6397] By Mr. Tyler:

Q. What meetings of the executive committee did the company pay you for attending?

A. Why, I was under the impression they paid me for all of them—for the time lost on those meetings. I turned in the time to the instructor, and I don't know where else it went. It didn't go to the union, to my knowledge.

Q. Where did you get that impression?

A. Rose Todd told me to turn in the time for our union meetings.

[fol. 6398] Q. You turned in slips for all union meetings and the company paid you for all of them?

A. I wouldn't say the company paid me, but they must have paid me. I turned it in to my instructor, just the same as anything else.

Q. Do you remember a meeting of the group chairmen on May 2—that would be shortly after you were elected—

at which contracts of other companies were discussed and at which the Labor Board hearing was discussed—on May 2, 1939?

A. I don't remember that particular meeting, but I know there was discussions of the trials and hearings all of the time.

Mr. Langsdale: That is the May 2 meeting, you say?

Mr. Tyler: May 2, 1939.

By Mr. Tyler:

Q. If you attend that meeting, you are under the impression you were paid for it?

A. Yes.

Q. Now, I will show you the minutes of that meeting, which is on page 4681 of the exhibits, and ask you to look at the minutes, and especially the first sentence, and see if that refreshes your memory as to the time at which that meeting was held.

Trial Examiner Batten: What is the number of that exhibit, Mr. Tyler?

Mr. Tyler: That is page—

[fol. 6399] Trial Examiner Batten: —4681. But what is the number of the exhibit?

Mr. Tyler: Board's exhibit 9-104.

Mr. Langsdale: That is the meeting of May 2?

Mr. Tyler: Yes.

Miss Weyand: That is one meeting of May 2. There were two meetings on May 2.

Trial Examiner Batten: This is page—

Miss Weyand: Page 4679 has a meeting of May 2, an earlier meeting.

Mr. Tyler: This is the second meeting of May 2.

(Thereupon the exhibit referred to in the last question was read by the witness.)

A. What I am reading here is just what was my big disappointment. It was in your talk that we should always

hold in mind that we was representing those operators, who we was supposed to be representing, and I only felt I done my duty when I done so, but I didn't get anywhere with it. I was always put off and told to talk to them. And there was just the same complaints coming up week after week—no action being done. This is just why I was sincere when I went on this committee. I was sincere, but I seen that they wasn't sincere.

Mr. Tyler: Now, I move that the witness' answer be stricken as not responsive and she be directed to answer the question.

[fol. 6400] By Mr. Tyler:

Q. The question is, do the minutes of this meeting that I show you on this page refresh your recollection as to the time of day it was held?

A. No, not the time of day. I think I remember the first [fol. 6401] meeting. It seems it was held—

Q. I am not asking you that. I am asking you, do the minutes of this meeting refresh your recollection as to the time of day it was held?

A. This says, in the evening, but—

Q. That does not refresh your recollection?

A. No.

[fol. 6404] Mr. Tyler: You mean your meetings began at 10 after 4?

A. No. We got off at the early time, 10 after 4, and the meetings didn't take up until 5, the regular meetings.

[fol. 6405] Mr. Tyler: I am going to make this perfectly clear, now.

The minutes of the first meeting I show the witness state that a meeting of the union chairmen was held on Tuesday evening, May 2, and the date above it is 1939.

The witness says that statement does not refresh her memory as to the time that meeting was held. That is on

page, Circuit Court record, 4681; that has already been stated.

I then show her the minutes of the group chairmen meeting for May 2, consisting of one page and one paragraph preceding that meeting, which commences with the sentence, "Mr. Tyler is to be here at 5 o'clock this evening [fol. 6406] for the purpose of meeting the new chairmen." That is all I consider relevant. And I ask her if that statement refreshes her recollection as to when the second meeting on May 2 was held.

Mr. Langsdale: Just a moment. I object to the question for the reason that the witness has never stated anything about the time of the meeting of the second—

Trial Examiner Batten: I think the witness has already testified these matters do not refresh her recollection as to the time of the meetings.

Is that right, Miss Witness?

The Witness: That is right.

By Mr. Tyler:

Q. Now, the minutes of the first meeting are just over a page long, are they not?

A. Yes.

Q. Did you attend that meeting?

A. Let me read it.

(Thereupon the minutes above referred to were handed to the witness by Mr. Tyler and read by the witness.)

A. Yes, I do remember that.

Q. Wasn't it held at noon?

A. I just couldn't say the time of day.

Q. And wasn't it held on your own time?

A. On my own time?

Q. Not on company time?

A. Well, I was always late getting back to work. I [fol. 6407] always had some time to turn in.

Q. You were always late?

A. Back to my machine, yes.

Q. Were you late after this second meeting of May 2?

A. I couldn't say about that particular meeting.

Q. Were you paid for that particular meeting?

A. If that meeting was held at the time stated here (indicating), I wasn't. I had time out.

Q. Did you attend the meeting of the group chairmen held on May 16, 1939?

A. Well, I don't know, but I imagine I did, if I was there.

Q. Didn't you state that after the first meeting you attended you became disgusted with the union and didn't take any part in it?

A. About the first—

Mr. Langsdale: I object to that. She didn't say anything of the sort. She didn't say "after the first meeting."

Mr. Tyler: She said—

Trial Examiner Batten: Well, the record will show what she said.

By Mr. Tyler:

Q. You don't know whether you attended the meeting of group chairmen on May 16, 1939?

A. Not that particular day, no. I might have been absent; I don't think I was, though.

Q. Did you make a motion at that meeting on that date? [fol. 6408]

A. Not to my remembrance now.

Q. Did you ever make a motion that the fees of attorneys for the Donnelly Garment Workers' Union be paid?

A. I don't recall right now.

Q. I will show you the minutes of the meeting of group chairmen of May 16, 1939, Board's exhibit No. 9-111, at page 4689. You may read the entire minutes, if you wish to, but all I wish to call your attention to is the statement in the middle of the page as to your making the motion, and I will ask you if that is true or false.

(Thereupon the minutes above referred to were read by the witness.)

[fol. 6409] A. I may have done so; I may have made the motion.

Q. If you did make it, did anybody force you to make it, by threats or—

A. No, nobody threatened me with anything.

Q. And if you did make it, did you still believe that the union was a good thing and was the actual choice of the employees—if you made this motion?

A. I thought it was necessary.

Q. You were willing at that time to move that the union pay attorneys for representing it, were you?

A. I knew that—

Mr. Langsdale: I object to the question. Her willingness to pay counsel has no relation whatever to her belief about the union.

Mr. Tyler: I think it has a bearing.

Mr. Langsdale: I don't think it has any relationship at all.

[fol. 6410] Trial Examiner Batten: She may answer.

A. I knew if we had a union, it was necessary to have an attorney.

[fol. 6413] Trial Examiner Batten: You may answer whether you attended meetings regularly up to that one you recall in Mr. Tyler's office.

A. It seems to me in between these union meetings we were having meetings at noon, too.

[fol. 6414] Q. If you were, were you attending all of the meetings up to that time?

A. I couldn't say if I attended each one.

By Mr. Tyler:

Q. But you were attending regularly up to and including the meeting we have just referred to on June 1, haven't you?

A. I don't remember whether it was every one or not.

Q. I don't mean every one, but you were attending regularly, were you not?

A. Fairly regularly, yes.

Q. And some of those meetings were at noon, you say?

A. I couldn't say whether it was at that particular time or not, but at some of these evening meetings, when we had them, we had noon meetings, too.

Q. You were doing piecework, were you, then?

A. Oh, yes. I have always done piecework.

Q. And in what way did the company pay you for attending these meetings, or any of them?

A. By me handing my time slip to my instructor, as I stated before.

Q. And what did the instructor put on the time slip?

A. I don't know. I would put on, "Time spent at chairmen union meetings," and sign my name, and give it to the instructor.

Q. You got paid by the amount of work you turned out [fol. 6415] as a pieceworker, did you?

A. I had a guarantee for the week, and I usually made over my guarantee.

Q. If you didn't turn out as much work as you would otherwise, you wouldn't get as much pay; is that right?

A. I would always get the guaranteed amount. If you didn't get that much that week, you would get the guarantee.

Q. And that guarantee would apply whether you were taking time out for union meetings or whether you were not, wouldn't it?

A. I could tell if I was paid, because, as I say, I almost always made over my guarantee.

Q. Don't you know as a fact that the company never paid you for time spent at union meetings?

A. I didn't know that. That's news to me.

Q. Who was your instructor in May, 1939?

A. I believe it was Mary Copowycz.

Q. When did you last see your pay cards for May, 1939?

A. I can't say that.

Q. Not for a couple of years, did you?

A. I don't get that question clearly.

Q. When did you last see the cards that indicate the time for which you were paid? When did you last see them?

A. I never did see any cards.

Q. You never did see them?

[fol. 6416] A. No.

Q. I now show you Board's exhibit 1-RRRR, which is an offer of proof by the intervener, and I show you what is apparently your name on the third page of signatures, being the ninth name down on the right-hand side, and ask you if that is your signature. A. Yes.

Mr. Lane: That offer of proof begins on page 3471, Circuit Court of Appeals record, and the page containing the signature is page 3476.

[fol. 6421] Q. I show you this offer of proof by the intervener, which is a part of Board's exhibit No. 1-RRRR, beginning at page 3490, and show you your name written at the bottom of the first page, or at the bottom of the last page, in the left-hand column, being the thirteenth name, and ask you if that is your signature. A. It is.

[fol. 6423] Mr. Stottle: Yes, Mr. Examiner. We have had photostated respondent's exhibit 44, and we now offer the photostats and ask leave to withdraw the original exhibit.

Trial Examiner Batten: If there is no objection—

Miss Weyand: (Interrupting). I object. The original has not been identified as a record of the company. It appears on a card which is practically new, and the dates purport to go back to 1925. It is all in one handwriting, as far as I can observe, and all in the same ink, and under the circumstances I do not think it should be withdrawn at this time.

Trial Examiner Batten: Well, if there is any objection I won't permit its withdrawal.

[fol. 6427] Mr. Tyler: Mrs. Weilert, just before we recessed for noon I think you had identified your signature to offer of proof of Intervener which I now show you and which is page 3490 of the record.

Mr. Langsdale: Is that on the one that has the largest number of names in the section?

Miss Weyand: That is a smaller one.

Mr. Tyler: No, it is only the bottom of one page of names, a half a page of names.

By Mr. Tyler:

Q. Am I correct in my memory that you said that was [fol. 6428] your signature? A. That is my signature.

Q. Have you had an opportunity to read this offer of proof, Mrs. Weibert? A. No.

Q. Well, I am going to read you two parts of it, and I think it will be proper to ask questions about those parts, but you will certainly have the right to read the whole letter if you want to add any explanation.

Miss Weyand: You don't mean letter, you mean offer.

Mr. Tyler: I mean offer.

By Mr. Tyler:

Q. At the bottom of the second page appears this paragraph:

"The chairman then passed out cards which said in substance: 'I hereby agree to become a charter member of the Donnelly Garment Workers' Union and agree to abide by its by-laws and regulations.' It was explained that the employees could sign these cards or not as they chose, and that they should sign them when if doing so was their own voluntary choice."

Is that statement true or false?

A. They were always passing out those cards, but in signing that I don't think we used our best judgment.

Q. Now, your memory as to passing out those cards was just as good when you made this affidavit in 1939 as it is [fol. 6429] now, wasn't it?

Miss Weyand: That is not an affidavit.

Mr. Tyler: I am sorry.

Trial Examiner Batten: An offer of proof.

Mr. Tyler: An offer of proof.

Mr. Langsdale: I object to that as argumentative.

Mr. Tyler: I think that is proper in testing her memory.

Trial Examiner Batten: He is asking if her memory was as good then as it is now.

A. That was in 1939?

Mr. Tyler: Yes, this offer of proof was made in 1939.

Miss Weyand: You have not designated what chairman passed out what cards at what meeting. You will have to point out.

By Mr. Tyler:

Q. Isn't it clear to you it was the organizational meeting when the cards were passed out?

A. It is now since you mentioned it.

Q. Well, I believe you answered that it is true the employees were told they could sign those cards or not as they chose, and that they should sign them if in so doing it was their own voluntary choice.

A. I was always told that.

Q. When you signed that did you believe that in sub-[Vol. 6430] stance was not true, that the employees were not free to sign the cards?

A. I don't know whether everyone felt free but I think everyone of them did sign that.

Q. Well, was it true you felt free to sign if or not when it was passed out?

A. I felt like if I didn't sign it I wouldn't have a job.

Q. And you felt you were not free then, didn't you?

A. I don't know what you would call it.

Q. All right. And when you signed this statement you then signed something you believed was not true, is that correct?

A. I don't know whether it was true or not. I told you how I felt about it.

Q. I'll read you the last sentence — or the first sentence in the last paragraph of the offer of proof, which would be 3492, or possibly 3493 of the record:

"That organization meeting convened at 4:30 or 4 —"

I think that is 45, as near as I can read it. The first hour is 4:30, isn't it?

A. Yes.

Q. And the next one, I think, is 4:45?

A. Well, I can't tell.

Q. * I can't either. Let's assume it is 4:45:

"This organization meeting convened at 4:30 or 4:45 o'clock and lasted about an hour and a half or longer." [fol. 6431]. Was that statement as to the time it convened true when you signed it?

A. If that was the organizing of our union I still think I am right.

Q. Well, was this true or not, that the meeting convened at 4:30 or 4:45?

A. I don't know what time it was over, I don't remember that. Is that the meeting where I said I went back and timed out?

Q. Well, this is the organizational meeting. And we agreed "Convened" means "began", when it started.

A. Well, it was in the afternoon it started.

Q. Then, was the statement that it convened at 4:30 or 4:45 true or false?

A. It might have been; it might have been after our quitting time and we went back upstairs and timed out.

Q. And your memory, when you signed this, about those facts happening in March, was at least as good as it is now, wasn't it?

A. Why, I don't know what my memory was then.

Q. Don't you think your memory in 1939 as to events happening in April 1937 was as good as it is now, at least?

Mr. Langsdale. I object to the question as argumentative.

A. I don't know whether it was or not.

[fol. 6432] Mr. Langsdale: Just a moment —

Trial Examiner Batten: She has answered it, she says she doesn't know whether it was or not.

By Mr. Trier:

Q. When these offers of proof that have been shown you were signed by you were you still of the opinion that it was the full, free wish of the employees to belong to the union?

A. I felt it was what I should do if I wanted to work there.

Q. Please answer my question. When you signed these offers of proof were you of the opinion that the union was the free will choice of the employees?

A. As far as I knew about it then.

Q. You thought it was, as far as you knew about it?

A. Yes.

Q. I think you said something about telling Rose Todd that you were pleased with what had been done, but there wasn't nothing done?

A. That's right.

Q. You realized that the union had secured substantial advantages for the employees up to that time, had you?

A. I couldn't say that.

Q. You didn't see any signs —

A. (Interrupting) No.

Q. (Continuing) —that the contracts of the union had [fol. 6433] secured increases in minimums and additional holidays on up beyond what they had had before, you didn't know that?

A. I couldn't see that they were bettering things.

Q. Well, will you say that the union had not secured increases in minimum wages and holidays for which pay was allowed?

A. I just don't remember what the minimums were. That one incident, I think, that \$15.00, that one incident; but they had been arguing about that for some time anyway, because after they had worked there a long time I think they would have been paid anyway without the union.

Q. You think they did get increases but they would have gotten them anyway whether there was a union or not?

A. Yes, I do.

Q. Isn't it a fact that the rule about not paying girls for repair time was rescinded, was changed by the company after about six weeks after it was put in?

[fol. 6434] Miss Weyand: I object to the question in that you have misstated the rule that was supposedly put into effect and changed. I think if the question is allowed it should be cleared up what incident you are referring to, because you said the matter of not paying girls for the

time they did repairs was rescinded, whereas the testimony was that the change was that not only the girls weren't paid for the time, but that there was a further deduction made.

By Mr. Tyler:

Q. You heard Miss Weyand's statement, Mrs. Weilert?

A. Yes.

Q. Wasn't the rule she speaks of changed by the company about 6 weeks after it went into effect?

Mr. Langsdale: Just a moment. I object to that as immaterial to any issue in this case.

Trial Examiner Batten. She may answer.

A. After the union went into effect?

By Mr. Tyler:

Q. No, after the rule went into effect the girls wouldn't be paid time spent on repairs. Wasn't that rule changed by the company after about 6 weeks?

A. It was changed after I objected to their practice, yes.

Q. And it was changed then partially either because you objected to it, or because the union objected or requested that it be changed, wasn't it?

[fol. 6435] A. My opinion is that it was changed because I demanded that put on their checks.

Q. You think the sole cause was your personal demand?

A. I don't know of anyone else that objected to it in that way on the committee.

Q. Don't you know whether the union took that up?

A. I don't know whether she did or not, Rose Todd, she was arguing for the company with me.

Q. Isn't it a fact you refused to do any repair work at all before you left the company even if the company had paid you for repair work?

A. I said that if it came back to me, after it came back I wouldn't rip it, and when it came back that is just what I done, I refused to rip it.

Q. Whether the company paid you for the time or not you refused to do any repair work, whether the company paid you for repair time or not, before you quit?

A. Well, I guess that is the way it was.

Redirect Examination.

By Miss Weyand:

Q. Will you state what the rule was about paying the girls for repairs prior to the change that you complained of?

[fol. 6436] A. Why, it has always been the same, as far as I know, that when they lost time I considered — no girl likes repairs, she didn't make mistakes deliberately.

Q. Well, was she paid for the time she spent making repairs?

A. If she didn't make her guarantee she certainly was because she got her guarantee in salary just the same.

Q. And if she was making her guarantee anyway did she get paid for the time she made repairs?

A. She couldn't have, she lost that time repairing.

Q. And she did it on her own time if she was making her guarantee for the week, is that correct?

A. That's right.

Q. Now, what was the change in the rule?

A. That those that didn't make their guarantee for the week — well, the way I would have to express it, that girl would have to pay the company to stay there and repair after she had lost her time and hadn't even made her guarantee anyway; now, that is my way of expressing it.

Trial Examiner Batten: Well, how would that work out?

A. Well, maybe if she hadn't had to repair she might have made her guarantee. Well, if she had repairs, why, that certainly kept her from making money on piece work, and time spent repairing she could have spent making money.

Trial Examiner Batten: What you mean is, if the [fol. 6437] minimum was \$16.50 and she earned \$15.00 making dresses —

A. (Interrupting) That's right.

Trial Examiner Batten: (Continuing) —and she had four hours of repair work —

A. (Interrupting) That's right.

Trial Examiner Batten: (Continuing) —she then lost that \$1.50?

A. That's right.

Trial Examiner Batten: Which she would have made had she made a dozen more dresses?

A. That's right. When she received her check all the time that she spent on those repairs was deducted from that guarantee; and any time anyone, they did not have any guarantee because, you know, mistakes will happen to anyone — I don't know of anybody down there that didn't have repairs once in a while.

By Miss Weyand:

Q. When you went to Rose Todd about that matter what did you say to her?

A. I asked Rose Todd what was the meaning of taking out of these girls' checks for repairs, and she said, "Well, we have always taken out for the repairs, the company has always taken out for the repairs," and I said, "Rose, I have worked here a long time and I have had repairs the same as other people," and I said, "No one has ever taken money out of my check," and she said, "Well, that is Mrs. [fol. 6438] Reed's" — no, I asked her, I said, "Who authorized them to do this, Rose?" and she said, "Mrs. Reed did," and that is when I told her I didn't believe it, and I sincerely meant that, that didn't sound like Mrs. Reed to me.

Q. Did you know what the terms of the union contract with the company in regard to the minimum guarantee were at that time?

A. Well, if they were on a \$20 guarantee they were supposed to have \$20, that was my opinion; if they didn't make it they were supposed to get \$20 anyway. There were lots of times when you waited for work, and other conditions existed that you wouldn't be able to make that amount, or over.

Q. When you spoke to Rose Todd did you mention the terms of the contract to her?

A. Yes, I did. I told her I felt it wasn't worth the paper it was written on to me, that an "if" or an "and" to the average person just changed the meaning of it, and in my opinion I didn't feel like that contract was worth anything.

Q. Did Rose Todd agree to take it up with the company on behalf of the employees?

A. I told her I didn't think it was fair or reasonable to make those deductions from the employees; she said maybe they had been a little hasty. I said, "Are you going to stand for it as our chairman?" and I said, "Well, I'll see Mrs. Reed myself," which I did later on.

[fol. 6439] Q. Did you ever receive any checks or money or payments in other forms from the Donnelly Garment Workers' Union for the time you spent at chairman meetings?

A. No, not only my regular checks.

Q. And by regular checks you mean what?

A. My salary.

Q. From whom?

A. The Donnelly Garment Company.

Q. And those were the only payments you received?

A. Yes.

Q. This morning, in answer to a question, you said you became convinced, after the circumstances that you discovered at meetings of the Donnelly Garment Workers' Union chairmen that "they were not sincere." Whom do you mean by "they"? A. The company.

By Mr. Langsdale:

Q. Mrs. Weyert, you were shown this offer of proof of the intervenor on which your name was signed on the second page, were you not? A. Yes.

Q. You were shown that by Mr. Tyler? A. Yes.

[fol. 6440] Q. And did you read it?

A. I don't believe I did.

Q. Well, you read it all the way through.

Mr. Tyler: Which one is that, Mr. Langsdale?

Mr. Langsdale: I don't know how you designate it. It is just one page of signatures.

Miss Weyand: That is 3490 of the Circuit Court of Appeals record.

[fol. 6441] A. No, I didn't read the first part until just now.

By Mr. Langsdale:

Q. You have now read it all, have you?

A. Yes.

Q. Do you remember when you signed this document—
pardon me.

Mr. Langsdale: Give me the exhibit number of this.

Mr. Lane: 1 quadruple R.

Mr. Langsdale: Are they all 1 quadruple R?

Mr. Lane: All the offers are, and that is page—

Miss Weyand (Interrupting): 3492 where her signature appears.

By Mr. Langsdale:

Q. Do you know where you signed this document?

A. I don't remember.

Q. Do you know how you happened to sign it?

A. No, I don't remember that.

Q. Do you know when you signed it?

A. No. We were signing so many things I can't designate any certain one.

Q. So your recollection of how, when and where, and under what circumstances you signed it, is absolutely nil, is it?

A. Well, I don't recall when I signed that particular paper, no.

Q. Now, I notice there are 36 names signed to this document. Were you all there at the same time, do you know?

[fol. 6442] A. I don't even remember of it.

Q. You have stated in your testimony that the instructor told you of the meeting of April 27?

A. That's right—well, all of them.

Q. I understand, but the organizational meeting of April 27, your instructor told you about it, did she?

A. Yes.

Q. That is true, is it, the instructor told you about it?

A. Yes.

Mr. Lane: That is objected to as an attempt to rehabilitate the witness.

By Mr. Langsdale:

Q. What did she say about it?

A. She said there was to be a meeting downstairs and to shut the power off, and we all just went down.

Q. And did she say anything more?

A. Well, once she told us they were going to organize our union.

[fol. 6444] Mr. Langsdale: And you testified that meeting occurred during working hours?

A. Yes.

Mr. Langsdale: So then this part of this document, which you signed, is not true?

Mr. Lane: May I have a continuing objection to all this examination? It is a mere attempt to get the witness to reverse what she has formerly said.

Mr. Langsdale: I object to that comment because it is not an attempt to get the witness to reverse her previous testimony.

Trial Examiner Batten: You may have a continuing objection.

[fol. 6445] Mr. Langsdale: Or "That said meeting was convened after the close of working hours at the plant." That is not true, is it?

[fol. 6446] A. I don't remember what time the meeting was over, but it was started in the afternoon sometime, and I went back up and timed out. I didn't time out before I went down there, I came all the way back to the eighth floor to time out and put my work away.

By Mr. Langsdale:

Q. Do you understand the meaning of the word "convened"?

A. Maybe I don't, clearly.

Q. That means to start.

Trial Examiner Batten: Did the meeting start after working hours, or—

A. (Interrupting). No, it started in the afternoon before working hours were over.

By Mr. Langsdale:

Q. Now, I will ask you if this part of this document [fol. 6447] signed by 36 people is true, "Nor did any instructor ask or direct the employees to attend."

A. They told us that there was to be a meeting, and they went along with us.

Q. All right. Did you hear any discussion that afternoon or any motion that came up?

A. No, we didn't discuss anything. We were told that we were going to have a union.

Q. But when the matter of the name of the union came up, did anybody debate it? A. No.

Q. The name was already printed on the cards, wasn't it? A. Yes.

Q. I will ask you if this particular statement: "The name of the union was discussed," was true?

A. I don't know who it was discussed with.

Q. Well, did anybody debate it or—

A. (Interrupting) At that meeting?

Q. (Continuing)—question it or discuss it?

A. No.

Q. Now, the last paragraph in this document, it starts out: "This organization meeting convened at 4:30 or 4:45 o'clock," is that true? A. That it—

Q. (Interrupting) Convened that late in the afternoon? [fol. 6448] A. No.

[Fol. 6458] . . . Cross-Examination.

By Mr. Hogsett:

[Fol. 6459] Q. Mrs. Weilert, you told Mr. Tyler, in substance, that you did not think that your Donnelly Garment Workers' Union contract had helped your wage situation any. Do you remember that—you thought the company would have done as well by you without it? Have I fairly stated that? A. Yes.

Q. Now, do you know of any other union contract with a garment manufacturing concern like the Donnelly Garment Company, with guarantees of as much as \$16.50, \$20.00, \$22.50, and \$25.60 a week?

Mr. Langsdale: Just a moment. I object to that as immaterial. It doesn't tend to prove or disprove any issue in this case and involves a subject which has been ruled out by the Examiner.

Trial Examiner Batten: She may answer.

By Mr. Hogsett:

Q. Do you know of any?

A. I'm not familiar with other factories' guarantees. I don't work at other places.

Q. I didn't know but what you might have some general familiarity with it.

A. No, I'm not familiar with other factories at all.

Q. In saying you didn't think this contract had helped your situation, and did you know how the guarantees provided in that contract compared with other contracts?

A. Only what Rose Todd showed us.

Q. What did she show you?

[fol. 6460] Mr. Langsdale: I object to that as immaterial. It does not prove or disprove any issue in this case. If we are going into these contracts—

Trial Examiner Batten: She may answer.

A. She showed us a list of garment factories and the—

By Mr. Hogsett:

Q. —guarantees? A. Yes.

Q. She gave you the substance of what those contracts provided, as far as guarantees were concerned? A. Yes.

Mr. Langsdale: May I have a continuing objection to this?

Trial Examiner Batten: Yes.

Mr. Hogsett: Isn't it a fact, Mrs. Weilert, that the guarantees which the Donnelly Garment Workers' Union contract provided were from 50 to 200 percent in excess of those in the contracts that Rose Todd told you about?

A. I don't—

Mr. Langsdale: Just a moment. I object to that as improper. The contracts themselves would be the best evidence. I object to this as an effort to prove what would be in an I. L. G. W. U. contract by secondary evidence.

Trial Examiner Batten: No. It is simply an attempt to prove what Rose Todd said there. It isn't an attempt to prove what the contracts actually show.

[fol. 6461] By Mr. Hogsett:

Q. Isn't it true that the guarantees in the Donnelly contract were from 50—depending, of course, upon the varying character of service—from 50 to 200 percent in excess of the guarantees in these contracts that Rose Todd told you about?

A. I don't remember just the guarantee amounts of the other factories now, but I still say our union didn't help any.

Q. I know. And I am testing the reasonableness of your conclusion. That is why I am asking you these questions.

Mr. Langsdale: Just a moment. I object to the line of examination. The witness' distinguishing herself between what would be proper and what would not be proper—

Mr. Hogsett: She wasn't comparing her wage scale with another factory's, but she was saying they were no better in the Donnelly factory because of the union.

Trial Examiner Batten: Proceed.

Mr. Hogsett: Isn't this much true: From such knowledge as you acquired on the subject of wages at other garment factories, that the wages contracted for and the wages paid in the Donnelly plant were far in excess of those contracted for and paid in any other garment plant that you ever heard of?

Mr. Langsdale: Just a moment.

Will you read that question, please?

Trial Examiner Batten: Not that you ever heard of—

[fol. 6462] Mr. Hogsett: That you then heard of.

Trial Examiner Batten: That she then heard of, in this talk with Rose Todd, or what—

Mr. Langsdale: Is this confined to the talk with Rose Todd?

Trial Examiner Batten: Yes; as far as the information Rose Todd disclosed to the witness.

The Witness: Maybe Rose didn't show me a list of the other factories.

Trial Examiner Batten: Just a moment.

By Trial Examiner Batten:

Q. Whether she showed you all of them or only one, were the contracts Rose Todd showed you and told you about—was there less guarantee in those than in the Donnelly Garment Company's?

A. Yes, the ones she showed me.

By Mr. Hogsett:

Q. Do you know of any others she didn't show you?

A. No, I'm not familiar with their contracts.

Q. How many did she show you?

A. You mean, different factories?

Q. Yes. A. I don't recall.

Q. Nine or ten?

Mr. Langsdale: I object to that as assuming it was either nine or ten.

[fol. 6463] Mr. Hogsett: It's a question: Was it nine or ten?

Trial Examiner Batten: Do you know, Miss Witness, how many it was?

By Mr. Hogsett:

Q. Can you tell me approximately how many contracts she showed you?

A. She didn't show me any contracts.

Q. You said awhile ago she hadn't shown you "all of the contracts." What did you mean by that?

A. She hadn't shown me any contracts.

Q. What did she show you, or tell you?

A. This that was in the trial, that they had brought it out in the trial.

Q. I thought that was probably what you meant. Isn't this a fact, that Rose Todd showed you the figures that had been sworn to under oath and produced in docu-

mentary form in nine contracts with the International in house dress and wash frock concerns in the Kansas City territory, and in the only silk shop, namely, the Marlene dress factory, in the Kansas City territory?

Mr. Langsdale: Just a moment.

Trial Examiner Batten: You mean, did she show her the contracts?

Mr. Hogsett: The figures in those contracts.

By Trial Examiner Batten:

Q. Did she have a list of those, the figures for each place, Miss Witness?

A. No. She just pointed out the shops that were paying less than the Donnelly Garment Company.

Q. Did she read the amounts? A. Yes.

Q. She went down the list— A. Yes.

Mr. Hogsett: In other words, she gave you indefinite figures that had been sworn to and produced in documentary form in the—

Mr. Langsdale: Just a moment.

Mr. Hogsett: Now, Mr. Langsdale,—

Mr. Langsdale: Well, I—

Mr. Hogsett: Will you, please, before you answer a question for me, take a good look at Mr. Langsdale and see if he is objecting, so that I will not constantly be interrupted in my questioning?

Trial Examiner Batten: Just a moment.

Will you read the question, please?

(Thereupon the last question was read by the reporter.)

Mr. Hogsett: —in the equity suit tried before Judge Miller, didn't she?

Mr. Langsdale: Just a minute.

Mr. Hogsett: Please wait until he objects.

Mr. Langsdale: Now, I object to the question as assuming what Rose Todd showed her was in any docu-

mentary form sworn to or used in any court proceeding [fol. 6465] whatsoever, unless she knows. He doesn't ask her if she knows.

By Trial Examiner Batten:

Q. Of course, Miss Witness, you said she had a list, didn't you?

A. I started to answer in that way.

Q. All you know is, she had a list. A. Yes.

Q. Do you know where she got the figures or the names?

A. No.

Q. Or the information? A. Not at all.

Mr. Hogsett: Didn't you tell me not 15 minutes ago that she gave it to you as having been produced in the trial before Judge Miller?

Mr. Langsdale: Just a moment. She didn't tell him any such thing. I object to the misquoting of the witness.

Mr. Hogsett: I am not misquoting.

Mr. Langsdale: I think he is.

Trial Examiner Batten: Read the question.

(Thereupon the last question was read by the reporter.)

Trial Examiner Batten: Did you tell him that?

A. I don't think I told you she gave it to me. She read it to me.

Mr. Hogsett: Oh, well, I won't quibble about whether she gave it to you or read it to you.

Trial Examiner Batten: Just push your chair back that [fol. 6466] way, Mr. Hogsett.

(Thereupon Mr. Hogsett moved his chair farther from the witness.)

By Mr. Hogsett:

Q. Did she read it to you as having been produced at the trial before Judge Miller?

A. That's what she told me.

Q. How many different amounts or sets of figures did she read to you? A. I don't remember that.

Q. Was it nine or ten? A. I wouldn't say.

Q. Now, did the Donnelly Garment Workers' Union do anything at all that you approved of?

A. Not the union, no.

Q. What was the guarantee in the Donnelly plant, the minimum, before the Donnelly Garment Workers' Union was formed?

A. Well, as I stated before, in that contract that was the one thing that was changed, but that would have come about without the union, I'm sure.

Q. Would you be kind enough to answer my question?

Trial Examiner Batten: Just a moment.

The question to you is, what was the guarantee before the union was organized?

A. Different guarantees.

By Mr. Hogsett:

Q. What was the minimum guarantee?

[fol. 6467] A. Fifteen.

Q. Fifteen dollars a week? A. Yes.

Q. For how long had that been the minimum guarantee in the Donnelly plant? A. I can't say how long.

Q. For years? All of the time you were there?

A. Yes, I think so.

Q. How many years would that have been prior to 1937?

A. Three or four years.

Q. Now, this contract that the Donnelly Garment Workers' Union negotiated provided for a minimum guarantee of \$16.50; did it not?

A. That was the change that was made, yes.

[fol. 6479] By Mr. Hogsett:

Q. That is not the question. Had you known Mrs. Reed to do an unjust thing to her employees in your entire employment there? A. I don't know what she does.

Q. Well, I am asking if you ever heard of her doing an unjust thing to her employees? A. Not deliberately.

Q. Deliberately or otherwise, have you ever known of an unjust thing that emanated from Mrs. Reed in your entire employment there?

Mr. Langsdale: I have a continuing objection there, [fol. 6480] I assume?

Trial Examiner Batten: Yes.

By Mr. Hogsett:

Q. Will you kindly answer?

A. I never came in contact with Mrs. Reed.

Q. Would you mind giving me a direct answer, whether you ever came in contact with her or not, had you ever known any unjust thing that Mrs. Reed ever did during your entire employment there?

A. Not Mrs. Reed herself.

Q. Mrs. Reed directly or indirectly? I want an answer.

Trial Examiner Batten: Now, just a moment. What was that answer?

A. Not Mrs. Reed herself.

Trial Examiner Batten: Now, you say "directly or indirectly." It seems to me you are taking in a lot of territory.

Mr. Hogsett: I mean to.

Trial Examiner Batten: Well, I know you mean to. That is the reason I am asking you about it. What do you mean by "indirectly"? Do you mean through all her supervisory employees and management?

Mr. Hogsett: I mean exactly that.

Mr. Langsdale: I object to it on the ground the question is preposterous.

Trial Examiner Batten: Well, I wouldn't permit the witness to answer that question if she wanted to.

[fol. 6486] By Mr. Hogsett:

Q. In spite of your dissatisfaction, which you say was complete so far as the Donnelly Garment Workers' Union was concerned, you returned to work for the company after your absence in 1940, and again returned to work for the company after your absence in 1941, did you not?

A. I worked for the company, not the union.

Q. Yes, but you were entirely dissatisfied with everything the union had arranged with the company about employment, weren't you?

A. Just with the union I was dissatisfied, not the company.

[fol. 6491] By Mr. Tyler:

Q. Mrs. Weilert, in answer to a question by Mr. Langsdale, about the request for an election, that these employees signed, as you have been shown, you made some statement that you were under the impression that related to something the union hadn't done properly in the first place. Do you mean that you believe or are under the impression that the labor union is not a valid labor union unless the Labor Board holds an election for it, is that your opinion?

[fol. 6492] By Trial Examiner Batten:

Q. Do you understand the question, Miss Witness?

A. I don't know as I understand those terms; but my answer was and is that we evidently had signed something that should have been notarized, and was not, and this was a repetition of that, and it was being notarized; it was merely a paper we had signed before and was doing it over again.

By Mr. Tyler:

Q. Well, do you remember that this paper said that the employees wanted an election? Was it your impression [fol. 6493] that a labor union was not a legal labor union unless the Labor Board had called an election in the plant?

Trial Examiner Batten: Just ask her the question. I mean, you ask her, "What do you mean when you said there was something wrong with the union?"

[fol. 6494] By Mr. Tyler:

Q. Was there something in the fact the union hadn't had an election by the Labor Board that you felt that this application for an election was to cure?

A. I didn't know what was wrong.

Q. You didn't know whether it was the lack of an election or not?

A. There was something, or some rumor, it was something we had to sign again. I just don't remember that clearly.

Trial Examiner Batten: Miss Witness, the question to you is, you say you thought there was something wrong. Mr. Tyler asked you what you thought was wrong.

A. Well, I don't know what it was myself.

Trial Examiner Batten: Well, that is the answer, you don't know, is that it?

A. Yes, I guess it is.

By Mr. Tyler:

Q. Were these employees sincere in asking for an election?

Mr. Langsdale: Just a moment. I object to him asking for her to pass upon the sincerity of other employees.

Trial Examiner Batten: I don't think she can hardly pass on the sincerity of all the — is there 800 persons on there, Mr. Tyler?

Mr. Tyler: Yes, I think there is 1186.

Trial Examiner Batten: Well, I don't hardly think this witness could pass upon their sincerity.

[fol. 6495] Mr. Tyler: All right.

By Mr. Tyler:

Q. Did anybody in the plant ever tell you that they really didn't want to have a secret election down there in which everybody would vote without the management knowing how they voted?

A. Well, I always wondered why they didn't have.

Q. You thought they were entitled to that, didn't you?

A. Well, I thought they should have it.

Q. And you still do?

A. I don't think anything about it.

Q. In the meeting of group chairmen on May 2, in 1939, in which Mr. Langsdale called attention to a statement made by Mr. Tyler, that 15 or 20 people from this union testified in Federal Court, and they did a swell job of it, do you remember Mr. Tyler saying in that same meeting this: "If any one on this committee thinks they aren't working for these 1300 people, but for Mrs. Reed or Mrs. Reeves or Mr. Baty or someone else, I want to know it. You are representing that you are going to make a good bargain and take care of these 1300 people. In working on this committee, you aren't working for Mrs. Reed, you

are working for these 1300 employees. If there is any doubt about that, if you do not believe that, speak up now and say so." Do you remember Mr. Tyler saying that in that meeting?

A. To us chairmen?

[fol. 6496] Q. Yes.

A. I certainly do, and that is why I say, in all sincerity, about what I was trying to do, I thought I was doing my duty.

By Miss Weyand:

Q. Why did you say you thought it would have been better to have gone without vacations rather than have the Donnelly Garment Workers' Union?

A. Because I felt like that place was progressing just the same, and those nice things would have come along just as well without this union, far better; I think there would have been much more happiness in the plant without this union than there would have been with it.

Q. Can you explain that further, as to what you thought the union has done that lessened the happiness of the plant?

A. Why, it is just discontent since the union came in.

Q. What do you have reference to specifically?

A. Well, before the union, it seemed — well, I don't know — it seemed like when they go through with their grievances to the union, why, it is merely passed along to someone else, and before it is over, the very thing you have told them about is used against you.

Q. Do you know of any instance of that?

[fol. 6497] A. I have cited that in the instance where I was framed.

Q. Did you hear of any other girl ever complaining to the union and who felt that she got worse conditions because of making a complaint to the union?

A. I wouldn't —

Mr. Tyler: I object to that as hearsay. It wouldn't establish the truth of such an instance, if she merely heard of it.

Trial Examiner Batten: What was your answer?

A. I wouldn't speak for others. I am speaking for myself.

By Miss Weyand:

Q. I am asking if you ever heard any such a thing occur.

Mr. Tyler: I object on the ground it would be hearsay.

Trial Examiner Batten: You may answer.

A. On the committee, you mean, or in the factory?

By Miss Weyand:

Q. Have you ever heard any girl, as a result of complaining in a union meeting or to a committee or anywhere, complain that she had been treated unfairly because she had made the complaint?

A. I don't know that they put it in those words, that it was merely because of the complaint, but I think it was done, plenty of them.

Trial Examiner Batten: Now, just a moment —

Mr. Tyler: I move to strike that out as a conclusion.

Trial Examiner Batten: When you say "plenty of [fol. 6498] them," do you know the names of several girls who have been treated unfairly?

A. No, I know no names.

Mr. Hogsett: Now, if the Court please, that is pure speculation out of the blue sky. This witness is showing animus now, and she is willing to say, "I think it is done, plenty of it," without knowing the name of a single person; I move to strike it out.

Mr. Langsdale: I object to the scurrilous comment made to this witness by Mr. Hogsett.

Trial Examiner Batten: Mr. Hogsett, if you think that is true, why do you object to having this remain? Why do you want it stricken?

Mr. Hogsett: Because it will be here unobjected to, unless somebody on our side objects to it, and treated, maybe, as evidence, and it is not evidence, it is not worth the name of evidence.

Miss Weyand: There was plenty of things the company put out that I didn't think came under the head of evidence either.

Mr. Hogsett: This is not that type of case at all. Here is a fair question asked either by the Examiner or by somebody — I guess it was Miss Weyand — I think it was you, "Do you know anybody?" "No, I don't, but there was plenty of it." Now, she can't name a person, yet she is [fol. 6499] perfectly willing to leave that statement that "there was plenty of it." Now, that is not evidence.

Mr. Langsdale: Will you read the question and answer, please?

Trial Examiner Batten: You mean my question?

Mr. Langsdale: The question which she just answered, and where she said "plenty of it."

(Thereupon the question requested was read by the reporter, as follows:

"Q. Have you ever heard any girl, as a result of complaining in a union meeting or to a committee or anywhere, complain that she had been treated unfairly because she had made the complaint?")

Miss Weyand. My question was — I don't think it was stated quite accurately — Did you ever hear that any operator felt that because she had made a complaint either to a committee or in a union meeting she received unfair treatment?

Mr. Hogsett: Yes, that is right.

Mr. Reed: Now, we object to that as incompetent and immaterial, not redirect or recross-examination, whatever this is, and as calling for a mere speculation on the part of the witness, as to the feelings of somebody else, and if this was proven, it would be binding on no one.

Mr. Tyler: We object to it on the ground that if it would establish anything, it would tend to establish that injustice existed as to individuals and the union, and as [fol. 6500] being purely hearsay, without even the statement of the people themselves; and regardless of any fact it would be improper evidence, being hearsay.

Trial Examiner Batten: I still want the reporter to read my question and the answer to my question; that is what we started out to discuss.

(Thereupon the question requested was read by the reporter as follows:

"Q. When you say 'plenty of them' do you know the names of several girls who have been treated unfairly?

"A. No, I know no names.")

Mr. Hogsett: And I would like to have you pass on the motion that you strike out that statement of the witness that "there was plenty of it."

Trial Examiner Batten: Yes, I think my question was, when she added that on, "yes, plenty," I said to the witness, "Well, can you name any of the people," and she said she couldn't.

Mr. Hogsett: Now, I move to strike out the statement "there were plenty of complaints" on all the grounds heretofore given.

Trial Examiner Batten: I think it may stand, Mr. Hogsett, in view of my question to the witness and her statement that she couldn't name anyone.

Mr. Hogsett: All right, sir.

[fol. 6502] By Mr. Langsdale:

Q. Do you know it to be a fact there wasn't a single human being who received any raise at all by reason of the \$16.50 minimum in the contract of June 22, 1937?

Mr. Reed: You mean by that question to assert that as a fact?

Mr. Langsdale: Yes, sir.

Mr. Reed: And you ask it in this leading form?

Mr. Langsdale: I assert it is not a fact.

Trial Examiner Batten: Will you read the question, please?

(Thereupon the last question was read by the reporter.)

Trial Examiner Batten: You may answer.

[fol. 6503] A. I don't know whether they did or not.

[fol. 6512] Q. Now, when you signed this affidavit, asking for an election to determine which union had a majority in the Donnelly plant, did you think it was a nice time to ask for an election, when there was a closed shop agreement requiring everybody to belong to the Donnelly Garment Workers' Union, and recognizing some by-laws that said anyone that belonged to any other union would have to be fired? Did you think that was a convenient time for the Donnelly Garment Company or the Donnelly Garment Workers' Union to ask for an election?

Mr. Reed: I think just this, that Mr. Langsdale ought to ask leave to print that; that is the custom of the men that want to make a speech, that is out of order.

Mr. Langsdale: You should know, Senator.

Mr. Reed: I do know.

Trial Examiner Batten: Will you read the question, please? Of course, I think it is repetition. If I remember correctly, you asked this witness once before about the closed shop.

Mr. Langsdale: Well, I don't care whether it is in there or not.

(Thereupon, the last question was read by the reporter.)

Trial Examiner Batten: You asked this witness something about a closed shop contract, and if she didn't know that if it was a closed shop contract no one could join any other union, and it seems to me that you also said, "Isn't [fol. 6513] it true that no one could join any other union under the Donnelly Garment Workers' Union contract or by-laws?"

Mr. Langsdale: But, this question, I think, is proper cross-examination after Mr. Tyler had asked her if she wasn't in favor of having an election when she signed that document drawn up by Mr. Tyler back in May, 19— or June or July, 1939, he asked her if she wasn't in favor of one at that time, and I think she said, "yes." I am asking her now if she thought it was a nice, convenient time to have one, and if there wasn't a chance for anybody else to work there if they belonged to any other union.

Mr. Tyler: Now, I would like to enter my objection. In the first place, the fact that there was a closed shop wouldn't present the slightest difficulty in a secret election and allowing a secret election to govern, because any closed shop agreement could be set aside by a secret election, and Mr. Langsdale knows it; and in the second place, the witness has already answered the question, and said she thought there should be an election, and his only object is to get her to say, "No, I don't think there should have been an election," which is not proper.

Trial Examiner Batten: If there isn't a prompt objection to the question, I'll now enter one and sustain it.

Q. So, let's proceed.

[fol. 6514] Q. Did you have a thought that by a secret election the employees might get rid of the Donnelly Garment Workers' Union? A. That was my opinion.

Recross-Examination

By Mr. Hogsett:

Q. Just briefly— You told Mr. Langsdale in this last series of questions of his that this contract didn't get you a single thing of benefit. That has been the substance of what you told him.

I read from 4378 this term in the contract:

"The employer recognizes the union as the sole bargaining agency of the employees."

Prior to this contract did the Donnelly employees have any bargaining agent?

A. I didn't think we needed any.

Trial Examiner Batten: The question to the witness is, did they have a bargaining agent prior to this contract?

Mr. Hogsett: Yes.

Trial Examiner Batten: Now, you didn't, did you?

A. No.

[fol. 6515] By Mr. Hogsett:

Q. You didn't have any before this contract, did you?

A. Before the union was formed, no.

Q. You didn't have any agreement for arbitration such as you got in this contract, did you—had no agreement of any kind about arbitration? A. We didn't need it.

Q. Whether you needed it or not, you didn't have any?

A. No.

Q. You didn't have any agreement that there should be no strikes, stoppages, or lockouts, did you? Whether you needed it or not, you didn't have it? A. No.

Q. You didn't have any arrangement binding the company on the subject of vacations, did you, until this contract? Regardless of whether they were giving you pay for vacations, there was no contract that bound them to keep on doing it until they entered into this contract; isn't that true? A. No. We didn't need it.

Q. Whether you needed it or not, you didn't have any binding agreement—

Trial Examiner Batten: She said, "No."

Mr. Hogsett: All right.

Mr. Hogsett: You didn't have any agreement binding the company to pay half the premiums on your insurance—

[fol. 6516] A. I feel they could have broke it just as easy with that contract—

Mr. Hogsett: It isn't a question of—

Trial Examiner Batten: Just a moment, Mr. Hogsett.

The question is, there wasn't any contract prior to the Donnelly Garment Workers' Union, was there, requiring it?

[fol. 6517] A. No. We didn't need it.

Mr. Hogsett: Do you feel it necessary to argue this matter?

By Mr. Hogsett:

Q. Prior to this contract did you have any obligation binding the company to pay workers for Decoration Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day? A. No.

Q. Prior to this contract was there any obligation of the company fixing average minimums on group 1 operators of as much as \$25.60 for 40 percent of them, \$22.50 for 30 percent of them, and \$20.00 per week for the remainder?

Mr. Langsdale: Just a moment. Let me get the import of that question.

[fol. 6519] The Witness: No.

Mr. Hogsett: I will ask the same question with respect to the guarantees of the group 2 operators, being: \$20 a week for 40 percent of them; \$18 a week for 30 percent of them; and \$16.50 per week for the remainder. You had no obligation—

[fol. 6520] Trial Examiner Batten: Miss Witness, did you have these rates before this contract?

A. I don't remember; before 1937.

[fol. 6526] By Mr. Tyler:

Q. Did you ever go around the factory in March, 1937, or April or May, 1937, and ascertain what was being paid to every class of employee and what the rules in the [fol. 6527] factory were as to all matters of employee representation? A. Did I—

Q. Did you ever go around the factory and make that investigation?

A. No. It was none of my business to.

Q. So you couldn't have taken this contract and compared with this contract what conditions and pay in the various departments were before the contract was entered into, could you?

A. No. That was not my business.

Q. And you didn't take the contract and compare it with previous conditions? A. No.

Q. Then, as far as you know, there might be 1, 50, or 100 changes in this contract in what had gone on before, couldn't there, as far as you know, of your own knowledge?

Trial Examiner Batten: Of course, I assume, Miss Witness, if you didn't know what the conditions were before the contract, as far as you are concerned, all of the items in the contract might be new and improvements; is that right?

The Witness: I can't say what I want to.

Trial Examiner Batten: Why?

Mr. Tyler: Won't you just answer the question?

Mr. Tyler: As far as you know, isn't that possible?

Mr. Lingsdale: Is what possible?

[Tok 6528]. Mr. Tyler: Not what you wish or what you would like to think, but what you really know.

Trial Examiner Batten: Now, just a minute. In order that the witness understands— I think the question, in substance, is simply this: If you didn't know what any of the conditions were in the shop prior to the contract as far as you were concerned, all of the provisions in the contract may have been improvements over what had there before existed; isn't that right?

A. They may have been, but I don't think they were.

By Miss Weyand:

Q. Why don't you think they were?

A. Because I think those things would have come about even in a better way without the union than they did with it.

Q. Did you hear at the time the contract was entered into that many employees were terribly happy because they had gotten large increases and great improvements?

A. I never talked to very many that was pleased with that union.

Trial Examiner Batten: It isn't a question of whether they were pleased with the union. It is a question of whether they were pleased with the contract.

The Witness: No.

[fol. 6534] MARGUERITE KEYES, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

[fol. 6535] Direct Examination

By Miss Weyand:

Q. Will you state your name, please?

A. Marguerite Keyes.

Q. Where do you reside?

A. Kansas City, Missouri.

Q. Are you here under subpoena? A. Yes, I am.

Q. What is your business? A. I am a manufacturer.

Q. Do you have a shop in Kansas City?

A. Yes, I do.

Q. What is the name of your shop?

A. Marguerite Keyes, Incorporated.

Q. Where is your shop located? A. 905 Broadway.

Q. Were you ever employed by the Donnelly Garment Company? A. Yes.

Q. When did you first become employed by the Donnelly Garment Company?

A. In the spring of 1926.

Q. How long did you continue to be employed by the Donnelly Garment Company?

A. Until the spring of 1938.

Q. What was your position with the Donnelly Garment Company in March of 1937?

A. I was office manager and handled the finances of the company.

Q. I hand you I. L. G. W. U. exhibit No. 10 which appears at pages 5375 and 5961 of the Circuit Court of Appeals record and ask you to state when you first heard of that petition.

A. In the early spring of 1937.

Q. Where were you when you first heard of it?

A. In Mrs. Reed's home.

Q. What was the conversation that took place on that occasion?

A. Well, I had just come home from New York, and—

Mr. Lane: Just a moment, if Your Honor please. The intervenor objects to this and all similar questions. It is not proper rebuttal testimony.

Mr. Hogsett: We join in that objection.

Trial Examiner Batten: Overruled.

A. I was in Mrs. Reed's home. I had just come from New York. I don't remember whether I had been at the office or not; and when I was there, talking with her, she showed me this petition that had been presented to her by some of her employees, and she was very happy to think that those people had voiced their satisfaction in being associated with her.

By Miss Weyand:

Q. Did she look it over to see if all the employees were covered by the petition?

[fol. 6537] Mr. Lane: I object to that as calling for a conclusion.

Trial Examiner Batten: You may answer, if you know.

A. I recall Mrs. Reed—she said she “would like to have the petition 100%.”

By Miss Weyand:

Q. Who was not on the petition at that time, if you know?

A. Well, I know they didn't have the office and some of the executives of the company. I don't recall just the people that were not on there; however, I do know they did not have the tenth floor.

Q. What did you do after that, in that respect?

A. Mrs. Reed told me she would like to have that petition 100 percent, and whether I went back to the office that day or not, I do not recall; but the next day I did suggest to one of the girls in the office that she take this petition around and have it signed.

Q. Who was that girl? A. Pauline Shartzler.

Q. What was her position at that time?

A. She was a cost accountant and clerk, and worked on the pay roll.

Mr. Tyler: Mrs. Keyes, would you mind turning your chair a little? I have trouble hearing you.

Trial Examiner Batten: Will you speak just a little louder, please?

[fol. 6538] By Miss Weyand:

Q. Was she in the department of which you were the head? A. Yes, she was.

Q. Do you know whether Pauline Shartzter did circulate the petition then? A. Yes, she did.

Q. Will you look at the sheets there and tell us which one of those, if any, are in Pauline Shartzter's handwriting?

A. Well, you mean just—what is it?

Q. Which of the headings, if any, of those do you recognize are in Mrs. Shartzter's handwriting?

A. I would say that is Mrs. Shartzter's.

Q. That is page 5385 of the record?

A. That is Mrs. Shartzter's.

Trial Examiner Batten: Will you speak louder, please? What page is that?

Miss Weyand: 5386.

A. This is Mrs. Shartzter's.

By Miss Weyand:

Q. 5387?

A. And this is Mrs. Shartzter's (indicating).

Q. 5388. Now, will you look at the names that appear on those sheets and tell us what their positions are, as far as you know, generally, of the persons whose names appear on those sheets, first having reference to page 5385?

Trial Examiner Batten: Just step aside, please, Miss [fol. 6539] Weyand, so that other people can hear.

A. Well, I can just tell you, to the best of my knowledge,—that has been some time ago. I am not—I haven't had an opportunity to—

Q. Take your time in looking it over.

A. Miss Pauline Hartman was in the accounting department, cost accounting.

Mr. Langsdale: Speak a little louder, please.

A. Pauline Hartman, the first name that appears, was in the accounting department. Also, Opha Babb, Ellen

Hughes. I am not familiar with these next two names. Mrs. McCoster was Mr. Keyes' secretary, and Mrs. McClelland—I don't remember her capacity at that time.

Brigetta O'Brian was in charge of the advertising department. Betty Beal was a stenographer in the advertising department. Dorothy Stratton was in the order department; that also applies to Eleanor Ludwig, and John Lane. This next person I am not familiar with. June Smith, biller,—was a biller. I do not know the next person. Hallie Abenchain was a stenographer. Nettie Barnett was a stenographer.

I do not know the next person. Mrs. Borchardt was in the order handling department, but I do not know her capacity. Helen Atkinson, I believe, was in the filing department, but I am not sure.

These other people I am not familiar with. David Green [fol. 6540] was in the filing department. I do not know what Sam Sparks was doing at that time. I believe Martha Stevenson was in the pay roll department.

Ruth Alexander was in the order department, and Mrs. Stewart. Martha Landy was in the merchandise repair department. I do not know Lucy Hall. Mrs. Stephenson was in charge of the credit department. Mrs. Estes was her assistant.

Trial Examiner Batten: Will you speak a little louder, please.

A. Rachel Fredmon was in the credit department. Mary Butterfield was in the accounting department. Lucille Briggs was in the pay roll department; that also applies to Mildred Moore, Helen Swope, and Cecile Guerrant. Jane Daugherty, if my memory serves me right, was in the merchandise department. The other names I am not familiar with, at all. I know they were on that floor, but I do not know the department they were in.

Q. Referring to the next page, would you know whether those persons worked with the—who they were, generally? Page 5386?

A. Elmer Jensen was in the advertising department. Pauline Shartzer was in the accounting department; Ella

Mae Hyde was in the employment department, and Kathleen Denzel; Alice Blodgett was the nurse. I do not remember about Mr. Boozell at that time, but I think he was on the door, on the first floor.

[fol. 6541] Regina Stearman, Ruth Anderson, Rose Murray and Miss Cochran were in the retail store. Arthur Porter had charge of the parking lot. Martha Gray had charge of the retail store. Veda Hoyland, I believe, was in the buying department. Rose O'Leary was, I know. Mr. Weaverly had a desk in the first floor, and was an information clerk.

Marvin Price was in charge of the maintenance department. Anna Price was in charge of the shipping department. Dora Perry was the maid. Eloise Kleeburg was in the accounting department. Nellie Kraft was a designer. Dean Tutt was a porter. Ed Corbin a watchman, and W. E. Baker, I feel reasonably certain that was Bill Baker, a porter. Frances Keith was in the designing department at that time, I believe.

And Gertrude Cain was a designer.

Q. Do you know who the persons are whose names appear on 5387?

Trial Examiner Batten: Miss Weyand, is it necessary to go through every one of those names?

Miss Weyand: No, I don't think it is. She could generalize on about what floor they were on.

A. I can not read these. They are not very distinct. They are not very legible to me. Phenias Peterson, I believe, was the night watchman.

By Miss Weyand:

Q. What was Martha Gray's position with the Donnelly Garment Company, prior to July 15, 1939?

A. Well, I can only tell you while I was there. I left there in the spring of 1938.

Q. I will change the question, as to time, prior to the spring of 1938.

A. She was in charge of the retail store.

Q. What was the extent of her control over the retail store?

A. She was responsible for the personnel and pricing of all materials that were sold in the retail store.

Q. How do you know those were her duties?

A. Well, I always worked with her whenever there was anything I wanted to know. We had a budgetary system, and I would go over the expenditures of the department with her at the end of the month.

Q. Do you know how long she had had that position?

A. I am not sure. I don't recall just when she went into the employment of the Donnelly Garment Company, but I think it was either 1929 or 1930.

Q. Do you remember any discussion of Mrs. Gray's position, in February of 1935?

Mr. Reed: I can't hear the question.

A. Yes.

Trial Examiner Batten: Will you read the question, please?

(Thereupon the last question was read by the reporter.)

A. Yes, Mrs. Reed was in St. Louis at the time, and she [fol. 6543] called me over the phone and asked me to come to St. Louis. She had some things that she wanted to discuss with me; and Mr. Lee Baty and I went down that afternoon. We got in very late that night.

I went over to her hotel the next morning, and she told me that she was contemplating some personnel changes in the organization, and that she had in mind to make Mrs. Gray—place her in charge of the personnel department, that she had a way of getting along well with people.

Q. Do you know why Mrs. Reed was contemplating that change?

A. Yes, she said that there had been some dissatisfaction with the operators, and that they had discussed some of their problems with Mrs. Gray. She thought Mrs. Gray had handled herself very well, and that she would be a good person to work with the operators.

Q. Then did she express any dissatisfaction with the manner in which anyone else had been handling the operators? A. Yes, she did.

Q. What did she say?

A. That Mrs. Reeves had been too active; that some of the girls had wanted to—please don't hold me to strict accountability, but I believe there had been so much talk about organizing her people, and that some of the girls had been coming to Mrs. Reeves' office and discussing with her the girls that they had heard talk throughout the factory [fol. 6544] that they might join a union, and that those girls then would come—Mrs. Reeves would call them up to her office, and there was quite a bit of chaos throughout the organization on that account.

Trial Examiner Batten: Miss Weyand, this is going back into 1935, at the time of the N. R. A. case, isn't it?

Miss Weyand: Yes it is, in connection with the Loyalty League, and the testimony in that respect.

Trial Examiner Batten: I don't think that is, by any yardstick you want to use, or can be considered rebuttal. I think on two or three occasions I have said to Mr. Ingraham that I didn't believe, in this hearing, that we were going back into that old N. R. A. proceeding; in fact, I think I told Mr. Ingraham we were not.

Miss Weyand: Well —

Trial Examiner Batten: Now, just a moment. That they each had an opportunity to present the parts of the record in the old N. R. A. proceeding, and I didn't propose to reopen it. Now, this is, to me, clearly that very same thing.

Miss Weyand: Well, the company witnesses have testified as to the Loyalty League, and the manner of the formation, and so did Mrs. Reed and about Mrs. Gray. Of course —

Trial Examiner Batten: That is not this matter.

Miss Weyand: Mrs. Gray was the leading person forming the Loyalty League. Mrs. Reed testified in reference [fol. 6545] to her lack of information as to how the Loyalty League was formed. I think that this is proper rebuttal, because it deals with Mrs. Reed's relation with Mrs. Gray, the very month the Loyalty League was formed by Mrs. Gray.

Mr. Hogsett: In line with Your Honor's remarks now, I move to strike from the record all of the testimony of Mrs. Keyes, relating to conversations with Mrs. Reed or others, relating to all subjects back in 1935.

Mr. Tyler: Intervener joins in the same motion, and reiterates its objection that it is not proper rebuttal.

Miss Weyand: Then Mrs. Reed's testimony should be stricken pertaining to what she did in 1935, and what she knew of Mrs. Gray, and what she knew of the Loyalty League. If Mrs. Reed's testimony is going to stand, I submit that this is proper.

Trial Examiner Batten: I didn't say anything to you about the testimony of this witness with respect to the organization of the Loyalty League.

Miss Weyand: Mrs. Gray was the active party organizing the Loyalty League.

Trial Examiner Batten: Even assuming she was, I don't see that this particular testimony has anything to do with that. Now, you might say, well, it is a part of it; it is an inseparable part of the whole story. Well —

Miss Weyand: I think it is very proper rebuttal to Mrs. Reed's testimony about the capacity in which she remembered Mrs. Gray, if you recall. She went on with quite a long story of how Mrs. Gray was just a clerk in the retail store.

Trial Examiner Batten: I agree with you on that.

Miss Weyand: This is proper rebuttal on that.

Trial Examiner Batten: I agree with you this far, on some matters, who are the supervisory employees; but you are now going into the whole attitude of Mrs. Reed with respect to the period of 1935.

Miss Weyand: I will not continue with this line of questioning further. I do submit what is in the record at the present time is proper rebuttal about Mrs. Reed's denial that Martha Gray was anything more than a retail clerk.

Trial Examiner Batten: I don't consider it such, with reference to this last question. The only part I consider proper rebuttal and relevant is the part which refers to Mrs. Reed suggesting that Mrs. Gray take this job.

Miss Weyand: I also submit that it is proper rebuttal to Mrs. Reed's statement she did not know of any activity in her plant, questioning any employee about union membership. Mrs. Reed specifically testified to that.

Trial Examiner Batten: Let's assume that is true, Miss Weyand. You can't deny the fact that I said to Mr. Ingraham, on two or three occasions, that we are not going to open up that N. R. A. matter.

Miss Weyand: I am not opening it up, but Mrs. Reed [fol. 6547] testified to her lack of knowledge of any questioning of girls, and is, herself, a witness who testifies.

Mr. Reed: I can't understand what —

Trial Examiner Batten: I don't think it should stand; I am going to strike it, except the reference to the discussion between Mrs. Keyes and Mrs. Reed, about Mrs. Gray taking the job as employment manager, or whatever it was.

Miss Weyand: This is all a part of that same discussion.

Trial Examiner Batten: I know it is all part of the same discussion.

Mr. Tyler: The intervener wishes to point out to Your Honor, at the time you made the ruling on Mrs. Reed's testimony Your Honor said, "That may not be proper rebuttal, and I do not mean that from now on the whole case will be gone over, but because the Board has had a full opportunity to present what it says. Mrs. Reed said, and because Mrs. Reed couldn't testify before, and is president of the plant, I shall allow this testimony on her part, but that does not mean that every subject that she mentioned is opened up to go over again." The reason behind the exercise of Your Honor's discretion was that this lady had not had an opportunity to testify before, whereas her opponents had had ample opportunity to testify as to what she said.

Trial Examiner Batten: That is true, Mr. Tyler; I am not making this ruling because of your remarks; I am [fol. 6548] making it because I think it goes back into that N. R. A. proposition, and back into 1935.

Now, we did go back into 1935, as far as the organization of the Loyalty League was concerned, but I don't think that it is proper rebuttal, and for that reason I have stricken it, in accordance with my ruling.

Miss Weyand: If this is going to be stricken, I would like to have such testimony of Mrs. Reed as denies she knew any of her operators were questioned about any union matters by supervisory officials, stricken from the record, too.

Trial Examiner Batten: There is no relation between the two, so I will deny it. In other words, there is no evidence before me to indicate that there is any consistency in the two.

Mr. Langsdale: I understand you didn't strike Mrs. Keyes testimony about her conversation with Mrs. Reed in which Mrs. Reed said she intended to make Mrs. Gray personnel manager.

Trial Examiner Batten: That is right.

Mr. Langsdale: That is still in.

By Miss Weyand:

Q. Did Mrs. Reed state whether or not she knew of the girls being questioned about their union membership?

Mr. Reed: Now, that is in 1935.

Trial Examiner Batten: That is the same conversation, I presume.

[fol. 6549] Mr. Stottle: We object to that for the same reason.

Trial Examiner Batten: I will sustain the objection.

Mr. Tyler: The intervener joins in the objection.

By Miss Weyand:

Q. How long had Marvin Price been in charge of the maintenance department in the Donnelly Garment Company?

A. He was in charge of the department when I came into the organization in 1926, and to the best of my knowledge was still in charge of it when I left.

Q. What do you know personally of his activities?

A. Why, I don't know what you mean.

Q. How do you know he was in charge? What contact did you have with him?

A. Well, he had charge of the maintenance department, and also the buying of supplies; and I wouldn't say every month, but every few months we would go over the expenses of the department and I would discuss them with Mr. Price.

Q. What was the position of Mrs. Florence Strickland at the Donnelly Garment Company, during the time you were employed with the company?

A. I can't tell you the early years, but I would say, in 1929 on through the balance of my time with the company, she was in charge of the pattern department.

Mr. Reed: In charge of what?

The Witness: The pattern department.

By Miss Weyand:

Q. Do you know anything about how Rose Todd happened to go to the law firm of Gossett & Tyler, to [fol. 6550] secure a lawyer to represent the Loyalty League?

A. I don't know about Rose Todd, but I do know that Mr. Keyes discussed Mr. Gossett with Mr. Ingraham.

Q. What was that conversation?

A. He talked with him over the phone from our home, and suggested Mr. Al Gossett as a fine person to represent the Loyalty League.

Q. Had the union been in —

Trial Examiner Batten: Just a moment.

By Trial Examiner Batten:

Q. Who was that?

A. Mr. Keyes.

By Miss Weyand:

Q. Had the Donnelly Garment Workers' Union been formed at that time?

A. Yes — the Donnelly Garment Workers' Union?

Q. Yes.

A. No, the Loyalty League.

Q. Did the Donnelly Garment Company ever employ Mr. Gossett's law firm to represent the Donnelly Garment Company?

A. Yes.

Q. When?

A. Well —

Mr. Langsdale: That has been admitted by stipulation, Miss Weyand, has it not?

Miss Weyand: It isn't in the record yet.

[fol. 6551] Trial Examiner Batten: You have a list there, haven't you?

A. Yes, he was retained by the Donnelly Garment Company.

By Miss Weyand:

Q. For how long?

A. Well, I know we paid him a retainer fee from 1926, when I went in there, until the fall of '32.

Q. What was Mr. Keyes' position with the company?

A. He was hired as general manager in charge of sales.

Q. When was he hired?

A. He was hired in the fall of 1932, but he came to the Donnelly Garment Company in January of 1933.

Q. Could Mr. Keyes hire and fire?

A. Well, he hired a great many people.

Cross-Examination

By Mr. Langsdale: A

Q. Mrs. Keyes, how do you know that Florence Strickland was in charge of the department that you have testified she was in charge of during that period?

A. Because I was in charge of the accounting department and the records, and we had installed a budgetary control back in 1929, and I would discuss expenditures of the department with her.

Q. Did you know Ted Scoles?

[fol. 6552] A. I am sorry —

Q. Ted Scoles, did you know him?

A. Yes.

Q. What was his position with the Donnelly-Garment Company in March and April of 1937, if you know?

A. He was in charge of the cutting department.

Q. Why do you say that?

A. Well, I never discussed anything with Mr. Ted Secles in the production department; anything I wanted to discuss with him, it was either with Mrs. Reeves or Mr. Baty.

Q. You knew him as being in charge of that department?

Mr. Reed: That is — the witness has said she didn't know him in any capacity, and counsel then puts a leading question to the witness. It is assuming that to be true.

Trial Examiner Batten: I think she previously said he was in charge. Now if her statement that he was in charge is not supported by any knowledge which this witness has, of course I see nothing wrong with her statement that he was in charge. She apparently thought he was.

A. According to our record and the pay roll, he was classified as in charge of the department.

By Mr. Langsdale:

Q. When was it that Mr. Keyes had the conversation with Mr. Ingraham about Mr. Gossett, if you remember?

A. In the early spring of 1937.

[fol. 6553] By Mr. Hogsett:

Q. Had Mr. Gossett been employed by Rose Todd at that time?

A. I don't know.

Q. As a matter of fact, you don't know when Mr. Gossett or Mr. Tyler was employed. You have no way of knowing?

A. No, Mr. Hogsett, to give you the exact date, I wouldn't know.

Q. Well, you wouldn't know the exact date, nor would you know whether it was before or after this conversation with Mr. Ingraham?

A. I know it was after that, but when —

Q. How do you happen to know that?

A. I don't know just when — I told you, — by day or date when he was hired.

[fol. 6555] By Mr. Hogsett:

Q. Well, now, how do you know that it was before this [fol. 6556] conversation that Rose Todd had employed Mr. Gossett?

A. It was right after they had organized the Loyalty League.

Q. Right after they had organized the Loyalty League? Why, they had organized the Loyalty League years before, had they not?

A. Well, there was no activity in the Loyalty League, other than little parties that they have.

Q. Now, let me — pardon me, were you through?

A. Yes, sir.

Q. You have now said that this conversation that you heard between your husband and Mr. Ingraham, talking on the telephone, occurred right after they formed the Loyalty League. Now, when was it they formed the Loyalty League? Give me the year.

A. Well now, just a minute, Mr. Hogsett. You see, I haven't had the benefit of anyone discussing any of these things with me. I am trying to collect this in my own mind.

The Loyalty League was formed in the spring, I believe, of 1935.

Q. All right.

A. Well —

Mr. Langsdale: Let her answer, please.

A. And the company union was formed in early '37.

By Mr. Hogsett:

Q. Now, your answer was that the conversation you [fol. 6557] heard occurred right after they formed the Loyalty League.

A. Well —

Q. Are you wrong about that?

A. Yes, I am.

Q. Two years wrong?

Trial Examiner Batten: Are you wrong about that?

A. I am wrong about that. I am now trying to collect my thoughts and associate some of these things. This has been a long time, and a great many things have happened to me since. I am trying slowly to answer your question, if you will just be a little patient.

Q. Did you hear Mr. Ingraham's side of this conversation?

A. I did not.

Q. You have no idea what he — what his purpose was in calling Mr. Keyes, have you?

A. I didn't say he had called Mr. Keyes.

[fol. 6558] Q. Was it the other way around?

A. It could have been. I know Mr. Keyes talked with Mr. Ingraham over the telephone in our apartment. I do not recall if Mr. Keyes called Mr. Ingraham or Mr. Ingraham called Mr. Keyes.

Q. Now, you kept that conversation in mind since 1937; that would be about 5 years, wouldn't it?

A. Yes, I know that.

Q. When did you tell Miss Weyand about it, the Board's attorney?

A. When did I tell Miss Weyand? I only met Miss Weyand the other night.

[fol. 6559] A. I probably told that to Miss Weyand the only time I had a conversation with her. She was in my home.

Q. When?

A. She came out the other night; I believe it was Thursday night. I had never seen Miss Weyand before.

Q. Did you volunteer that conversation? How did Miss Weyand happen to discuss it with you at that time? How could she have known about that conversation that occurred five years ago?

A. I believe she asked me if I knew—

Q. —of what?

A. —of the formation of the union. And I told her I did not know when they formed the union but I did recall this conversation of Mr. Keyes' with Mr. Ingraham.

Q. And the way you stated that to Miss Weyand was that Mr. Keyes suggested Al Gossett as a fine person to represent the Loyalty League?

A. Yes.

Q. Is that what you told Miss Weyand?

A. Yes, I did.

Q. Now, this conversation with Mrs. Reed in St. Louis, that occurred in 1935, you have said?

A. Yes.

Q. That's seven years ago?

(No audible answer.)

Q. Now, how—

[fol. 6560] Trial Examiner Batten: Mrs. Keyes, you will have to speak your answers out. The reporter doesn't get the nod of your head.

By Mr. Hogsett:

Q. Now, how did Miss Weyand happen to know about that conversation that occurred seven years ago?

A. Miss Weyand came to my home and we had a very nice, wholesome talk, and that was part of our conversation.

Q. But how did you happen to mention this conversation of seven years back; what led up to that?

A. Mr. Hogsett, I'm sorry, I couldn't tell you just how we happened to be discussing that. She didn't come out to see me because she knew me. She came out there because, knowing that I was at the Donnelly Garment Company, she wanted me to give her some information; if I could be helpful, and I told her if I could give her some information—if it was something I knew for a fact, I would be happy to discuss it with her.

Q. Now, if you don't mind, I would like to get an answer to the question. How did the subject matter of this conversation that occurred in St. Louis seven years ago happen to be discussed at all between you and Miss Weyand on this occasion?

A. I think she wanted to discuss Martha Gray with me, and she asked me some questions which I answered.

Q. And in that way you volunteered the incident of the conversation back in 1935 in St. Louis; is that it?

A. Oh, yes. She wouldn't know otherwise.

[fol. 6561] Q. That's the point. You must have volunteered a good deal of information to her.

A. Not a good deal. I don't give a great deal of information.

Q. But you volunteered practically all of the detail information that she has questioned you about, didn't you?

A. And I would say that is all she knows.

Q. Exactly. And you volunteered all of that to her?

A. The little I gave her, yes.

Q. Now, did Mrs. Gray ever become personnel manager?

A. She did not, while I was at the Donnelly Garment Company.

Q. To the best of your knowledge, she never did, did she?

A. No.

Q. Then, this conversation about Mrs. Gray down in St. Louis was, to put it in a slang way, the occasion of walking up the hill and down again— There was nothing—

Mr. Langsdale: I object to that as argumentative.

Mr. Hogsett: Well, I will withdraw the form of that question. It is objectionable, perhaps.

By Mr. Hogsett:

Q. However, it is characterized, it boils down to this, does it not, that the announced intention of Mrs. Reed to give consideration to making Mrs. Gray personnel manager did not result at any time in her becoming personnel manager?

Mr. Langsdale: Just a moment. I object to the question [fol. 6562] as calling for a conclusion of the witness, because the testimony was that that was just at the time when Mrs. Gray formed the Loyalty League. Now, whether that is personnel activity or not is for the Examiner to pass upon.

Trial Examiner Batten: She may answer, if she knows.

Do you recall the question, Miss Witness?

The Witness: You just asked me why Miss Weyand discussed this with me?

Mr. Hogsett: No.

Trial Examiner Batten: Do you want the question read?

Read the question, please.

(Thereupon the last question was read by the reporter as follows:

"However it is characterized, it boils down to this, does it not, that the announced intention of Mrs. Reed to give consideration to making Mrs. Gray personnel manager did not result at any time in her becoming personnel manager?")

A. Not to my knowledge.

By Mr. Hogsett:

Q. Now, coming to the first item you covered in your testimony, that is, the document marked International's exhibit 10— Is that right? Is it 10?

Miss Weyand: That is correct.

By Mr. Hogsett:

Q. (Continuing) You were at Mrs. Reed's home at the time the employees came out to deliver the first 10 [fol. 6563] or 12 pages of that?

A. Oh, no, I wasn't.

Q. Did you not say you were?

A. No, I didn't.

Q. Well, I misunderstood you then. I took it when you said you first heard of it in Mrs. Reed's home, you were there at the time.

A. I wasn't in her home when the petition was presented to Mrs. Reed.

Q. How soon after it was presented, if you know, were you there?

A. Well, I had been out of town and I don't know the exact date.

Q. In any case, you were there shortly after it was presented, as you understood?

A. I would say a couple of days after.

Q. Now, Mrs. Reed's attitude, as you expressed it, was that she was very happy to think that her people felt the way this petition indicated? A. Yes.

Q. As a matter of fact, she cried about it, didn't she?

A. Well, she was rather emotional, I thought.

Q. She was touched?

(No answer.)

Q. You know what I mean. A. Yes, I do know.

[fol. 6564] Q. And this remark, in the emotional state that she was in, was one that you carried on to Pauline Shartzer of your own accord?

A. Mrs. Reed told me she would like to have the petition 100 percent.

Q. And it was a natural thing, wasn't it, that she should?

Mr. Langsdale: I object to that as argumentative and not anything material as to any issue in this case.

• Trial Examiner Batten: Is that a question, Mr. Hogsett?

Mr. Hogsett: I will withdraw it and put it in a different form.

Mr. Hogsett: Did you not regard it as a natural thing for Mrs. Reed, in the emotional state that you say she was in, to make that comment? A. I would say—

Mr. Langsdale: I object to that as immaterial and incompetent.

By Mr. Hogsett:

Q. In any case, you passed the suggestion on to Pauline Shartzer and she obtained signatures of additional people on that petition that you have identified, and that's all there is to it? A. Yes.

Q. Were you present at the hearing before His Honor, the Examiner, when your late husband, Mr. Keyes, testified?

[fol. 6565] Mr. Hogsett: I beg your pardon. It was a slip. I regard any person acting in a judicial capacity as a court, from force of habit.

A. No, I wasn't.

By Mr. Hogsett:

Q. Did you know of his testimony before the Examiner? Were you familiar with the subject matter of it?

A. No, I wasn't.

Q. Let me read you this part of Mr. Keyes' testimony in this proceeding relating to a subject concerning which you have testified. I read from page 2037.

"Q. (By Mr. Ingraham) Now, Mr. Keyes, is there a Miss Alexander in your department?

"A. Yes.

"Q. What character of work does she perform?

"A. She assists me in the correspondence with the stores on matters having to do with filling of orders.

"Q. Has she any supervisory powers?

"A. No, sir.

"Q. Is she in charge of the work that Elsa Graham performed?

"A. No. I was in charge of that work."

Now, to the best of your knowledge, are those answers by Mr. Keyes accurate or inaccurate?

A. When I left the employ of the Donnelly Garment [fol. 6566] Company early in 1938—this was 1939, and I can't tell you anything about the policy of the company or anything that went on at the Donnelly Garment Company—

Q. I just would like to know, Mrs. Keyes, if you can tell me whether these answers Mr. Keyes gave, as you correctly say, in June or July of 1939, were accurate or inaccurate.

Mr. Langsdale: Miss Alexander?

Mr. Hogsett: Yes.

A. I can only say, if Mr. Keyes stated it, it was accurate.

By Mr. Hogsett:

Q. He would know, would he not?

A. I should say he would. I know nothing about it at that time.

Q. To the best of your knowledge, is this testimony by Mr. Keyes correct? I read from page 2023 of this transcript.

"Q. I would like to ask, Mr. Keyes, if you ever instructed, advised, or suggested in any manner to any employee of the companies', that is, the Donnelly Garment Company or the Donnelly Garment Sales Company, that they join the Donnelly Garment Workers' Union.

"A. No, sir.

"Q. Have you ever instructed or advised or suggested in any manner, directly or indirectly, to any employee of those mentioned companies that they should not join the International union?

"A. No, sir.

[fol. 6567] "Q. Did you ever hear Mrs. Reed, Mr. Baty, Mrs. Reeves, or any other official or any person with authority to hire, fire, or discipline, advise or suggest to any employee that they should join the Donnelly Garment Workers' Union?

"A. No, sir.

"Q. Or that they should not join the International union?

"A. No, sir."

To the best of your knowledge, during the time that you were employed at the company were those answers by Mr. Keyes as there given accurate or inaccurate?

[fol. 6568] A. I can only say I know nothing whatsoever of the union activities in the Donnelly Garment Company.

Mr. Hogsett: That helps toward an answer, but it doesn't quite answer, Mrs. Keyes, what I am asking you.

Now, let me explain what I would like to know:

First, let me ask when you and Mr. Keyes were married.

A. December, 1936.

Q. And you continued in your employ and he continued in the employ of the company from then until 1938, when you left? A. That's right.

Q. Now, during all of the time of your connection with the company, and with particular reference to the time from 1937, in the spring, on until you quit, were the facts as testified to by Mr. Keyes and which I have just read, from page 2023 of his testimony, accurate or inaccurate, to the best of your knowledge?

The Witness: Well, Mr. Examiner, I just stated that I knew nothing whatsoever of the union activities in the Donnelly Garment Company, so I don't know, by answering

that, that I could say Yes, or No, and when I say something, I want to know.

[fol. 6569] Trial Examiner Batten: The question is, can you say Yes or No on this matter, so far as you know.

A. If Mr. Keyes stated—whatever he stated I would say would be correct.

Cross-Examination

By Mr. Tyler:

Q. Mrs. Keyes, I think you stated that you are at present engaged in business, but I'm not sure.

A. I am, in the manufacturing business.

Q. At the present time? A. Yes.

Q. Did you give the name of it?

A. Marguerite Keyes, Inc.

Q. What does it produce?

A. We manufacture sportswear, and at present we are making a defense garment.

Q. When was that business started, Mrs. Keyes?

A. October, 1940.

Q. When did Mr. Keyes first become connected with the Donnelly Garment Company or the Donnelly Garment Sales Company? A. January, 1933.

Q. It is correct, is it not, that since 1932 there has been no employment of Gossett, Ellis, Dietrich & Tyler, or any [fol. 6570] body in that firm or connected with it, by the Donnelly Garment Company or the Donnelly Garment Sales Company?

A. By the Donnelly Garment Company, in 1932, to the spring of 1938, no.

[fol. 6571] MAY STEVENS, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Miss Weyand:

Q. Will you please state your name?

A. May Stevens.

Q. Where do you reside? A. 2617 Poplar.

Q. When did you begin to work at the Donnelly Garment Company?

[fol. 6572]. A. I believe it was in 1932, possibly a little while in 1931, but I know it was 1932.

By Miss Weyand:

Q. Were you working steadily in 1932?

A. No. Just the busy season.

Q. When did you begin to work steadily for the Donnelly Garment Company? A. In February, 1936.

Q. Had you worked seasonally at the Donnelly Garment Company from 1932 to 1936?

A. Yes, every year except 1935. I don't believe I was in the plant in 1935.

Q. Were you a member of the Loyalty League?

A. Yes.

Q. When did you join? A. In the spring of 1937.

Q. Did you attend any meetings of the Loyalty League?

Mr. Tyler: Intervener objects, because this is not proper [fol. 6573] rebuttal.

Mr. Hogsett: We join in that objection, asking that counsel be restricted to rebuttal.

Trial Examiner Batten: You may proceed.

Mr. Hogsett: May we have a continuing objection, as in the case of other witnesses?

Trial Examiner Batten: Yes.

Mr. Tyler: And the intervener also?

Trial Examiner Batten: Yes.

A. Only when these meetings were in connection with the Donnelly Garment Workers' Union.

Q. Did you ever work in Etta Dorsey's section?

A. I did.

Q. When? A. In February of 1937.

Q. Where was that section located at that time?

A. The first week that I worked extra in her section it was on seven. The machines were moved to the eighth floor.

Q. How do you happen to remember that?

A. Because I was clipping shirring and the prices were extra good, and one afternoon clipping from four machines I made \$13.50.

Mr. Reed: How is that rebuttal?

Miss Weyand: Miss Reporter, will you mark these check stubs?

[fol. 6574] Trial Examiner Batten: What is it, Senator?

Mr. Reed: I thought you had not ruled. I move to strike the answer. We are going into a matter of prices now, I suppose.

Miss Weyand: No.

Trial Examiner Batten: It may stand as the witness' reason for recalling the other evidence, the moving of the sections.

Miss Weyand: Miss Reporter, will you mark these two check stubs as Board's exhibits 40-A and 40-B, respectively?

(Thereupon the check stubs above referred to were marked "Board's Exhibits 40-A and 40-B, Witness Stevens," for identification.)

Miss Weyand: Mrs. Stevens, I hand you Board's exhibit No. 40-B for identification and ask—

Mr. Reed: Exhibit—what?

Miss Weyand: 40-B for identification.

[fol. 6575] By Miss Weyand:

Q. (Continuing) —and ask if that check covers the week to which you had reference. A. Yes.

Q. And that week you were working on what floor?

A. Eighth floor.

Q. Who was the instructor of the section?

A. Etta Dorsey.

Q. How do you happen to remember that check stub?

A. Because it was the highest check I ever made at the Donnelly Garment Company.

Q. I hand you Board's exhibit No. 40-A for identification and ask you if that was the check stub of the preceding week. A. Yes.

Q. What floor were you working on during that week?

A. Seventh floor.

Q. Who was the instructor of the section on the seventh floor in which you were working? A. Etta Dorsey.

Q. Will you state for me what section number appears on the check stubs?

A. 811, hand sewing department.

Mr. Reed: I can't hear.

Mr. Hogsett: 811, hand sewing section.

By Miss Weyand:

Q. What section number were you working in on the seventh floor under Etta Dorsey?

[fol. 6576] A. I don't believe I recall the section numbers.

Q. Do you remember the section number on the eighth floor in which you were working under Etta Dorsey?

A. No, I don't.

Q. Do you know whether it was 811 or some other section number?

A. 811 was my hand sewing section.

Mr. Reed: I can't hear.

Trial Examiner Batten: Miss Witness, will you speak louder, please, so everyone can hear you?

Miss Weyand: And 811 wasn't the section in which Etta Dorsey was your instructor during these two weeks?

A. No.

Mr. Reed: What two weeks are they? They are referred to, I suppose, on the card, but I haven't the benefit of knowing—

Miss Weyand: I handed them over to the counsel table before, but you may look at them again.

Mr. Reed: You just tell me—

Miss Weyand: They are check stubs for the weeks February 12, 1937, and February 19, 1937, and indicate on their face that they are for wages to and including the dates I have read.

Miss Weyand: I offer these check stubs in evidence.

Mr. Hogsatt: No objection.

[fol. 6577]. Trial Examiner Batten: No objection? They will be received.

(Thereupon the check stubs above referred to, previously marked for identification "Board's exhibit No. 40-A and 40-B, Witness Stevens," received in evidence.)

Mr. Reed: Now, I would like to see them.

(Thereupon Board's exhibit No. 40-A and 40-B were handed to Mr. Reed.)

By Miss Weyand:

Q. In what section were you working in March and April, 1937? A. 811, on the sixth floor.

Q. Who was the instructor of that section?

A. Frances Morrison.

Q. I hand you I. L. G. W. U. exhibit No. 10, which appears at pages 5375 and 5961 of the Circuit Court of Appeals record, and ask you if the next to the last name on the first column on page 5384 is your signature.

A. Yes, it is.

Q. Did you read the heading at the top of the sheet before you signed it? A. Yes, I did.

Q. Was it true when you signed it?

A. The first part, yes. I was contented, more or less, with my work. But the last part or the second part, never [fol. 6578] at any time was it my views.

Q. And that is which clause or sentence that you were not in agreement with?

A. (Reading) "... and refuse to acknowledge any union labor organization."

Q. Why did you sign that statement?

A. Because I felt it was my job in doing so.

Mr. Langsdale: What was that answer?

Trial Examiner Batten: Will you read the answer, please?

(Thereupon the last answer was read by the reporter.)

By Miss Weyand:

Q. By that you mean what?

A. That I would be laid off if I didn't sign it.

Q. Did you attend a meeting in March of 1937 at which Mrs. Reed spoke? A. Yes, I did.

Q. What time of day was that meeting held?

A. In the afternoon.

Q. Was it during or after working hours?

A. During working hours.

Q. How were you notified of that meeting?

A. By the instructor.

Q. Who was your instructor at that time?

A. Frances Morrison.

Q. Did you wear your uniform to the meeting?

[fol. 6579] A. I did.

Q. Were you paid for the time you spent at that meeting? A. Yes.

Q. Now, what do you remember Mrs. Reed saying at that meeting? A. Well, that—

Mr. Lane: If Your Honor please, I make the same objection with respect to this witness, that this is not proper rebuttal testimony, and I would like a continuing objection to all such questions.

Mr. Hogsett: Same objection by respondent and same request.

Trial Examiner Batten: You may have a continuing objection.

By Miss Weyand:

Q. What do you remember Mrs. Reed saying at that meeting?

A. That she wouldn't have Dubinsky or any other "sky" running her business, and if the girls would stand by her, she would stand by them, and we would never have to belong to any union or pay dues to any union to work in her shop.

Q. Was there a committee appointed at that meeting to go see a lawyer? A. No.

Q. Did you go back to the sixth floor after the meeting?

A. Yes.

[fol. 6580] Q. Were you working on the same floor with Fern Sigler the last day Fern Sigler worked for the company? A. Yes.

Q. What did you see that morning?

A. A lot of commotion, and heard a lot of booing and singing, and other sections coming down and coming up—coming on the floor.

Q. How long did it go on?

A. Possibly an hour.

Q. Whom did you see from other floors whom you recall by name?

A. Ella Mae Hyde, Mr. Boozell—

Q. What was the next meeting you attended following the meeting at which Mrs. Reed spoke?

A. The meeting that the union was formed.

Q. Who notified you of that meeting?

A. The instructor.

Q. Now, what time of day—

Mr. Reed: I didn't get it.

The Witness: The instructor.

Trial Examiner Batten: Miss Witness, will you speak a little louder, please?

The Witness: It seems like I am shouting.

Trial Examiner Batten: Well, even I have some difficulty in hearing you.

[fol. 6581] By Miss Weyand:

Q. What time of day was that meeting held?

A. In the afternoon.

Q. Was it during or after working hours?

A. During working hours.

Q. Did you wear your uniform to that meeting?

A. I did.

Q. Do you know whether other girls in your section wore their uniforms? A. They did.

Q. What happened at that meeting?

A. Well, they had Mr. Tyler there to speak to us and told us they were going to—had talked about forming a union, and they passed out cards to every girl and seen that every girl had a card, and then waited until later in the meeting to take them up, to see that every card was accounted for.

Q. Did you sign a card? A. Yes, I did.

Q. Why?

A. I felt that I had to do it to hold my job.

Q. What made you feel that way?

A. Well, the Fern Sigler incident, just previous to that, and by Mrs. Donnelly saying we would never have to have a union, and I decided that they had changed so sudden that it was surely something for the company and I had [fol. 6582] better join. And when in 1934, when I was in another shop, at Twenty-sixth and Main, I met the Donnelly girls they had sent to that plant that were union girls—

Mr. Reed: Oh, wait a minute, now. That certainly is not rebuttal.

Trial Examiner Batten: Now, let the witness finish, Senator. If there is something you think should be stricken, all right, but don't interrupt the witness.

Read the answer thus far, please.

(Thereupon the last answer was read by the reporter.)

Trial Examiner Batten: Finish your answer.

A. (Continuing)—and talked to them most every day about the conditions and why they were sent down there, and they were told that they were not making their guarantee, and they knew it was because they were union girls and that they would eventually be laid off.

Mr. Reed: I move to strike that as incompetent, immaterial, and as not rebuttal, being mere hearsay, and binding on no one. I think the Examiner excluded us from the right to even ask questions about 1934.

Trial Examiner Batten: Well, Senator, assuming I did, hasn't this witness a right to say why she felt that way?

Mr. Reed: Certainly not, as evidence against us, that some girl told her—

Trial Examiner Batten: Of course, I don't assume that [fol. 6583] it is evidence against you. It is simply this girl's statement of why she did something. Now, during the examination of a good many witnesses, they were free to express their opinions as to why they joined the Donnelly Garment Workers' Union.

Mr. Reed: We were not allowed to go back to 1934.

Trial Examiner Batten: You were allowed to go back if the witness gave that as a reason for doing something.

Mr. Reed: Well, this witness is going farther than that; she is undertaking to tell conversations she had with girls she said once worked for the Donnelly Garment Company and to state their reasons.

Trial Examiner Batten: She is giving it as her reason why she did something.

Mr. Reed: Well, if a person has a reason, it isn't material here what her reason was. If she had a reason, where some officer of the company had told her to do something, that would be one thing, but here she is undertaking to tell that girls at another shop in 1934 told her that they were discriminated against because they belonged to a union. Now, that sort of evidence simply means you open the door to every kind of hearsay evidence in the world.

Trial Examiner Batten: No, it doesn't, Senator. It is her reason. Now, to strike out all of the testimony given by witnesses as the reason why they did certain things, I would say offhand at least a third of the testimony would be stricken, Senator.

[fol. 6584] Mr. Reed: And I think a third of it, and perhaps two-thirds of it, ought to be stricken.

Trial Examiner Batten: Well, of course I don't know that I would disagree with you about that at all. But we will proceed. It may stand.

Mr. Langsdale: I understand the Examiner is not letting that statement remain in as proof of what the girls at Twenty-sixth and Grand said at all?

Trial Examiner Batten: No, it doesn't prove what they said, and it doesn't prove the facts. It is simply this witness' reason for why she did something.

By Miss Weyand:

Q. Did you attend all of the meetings of the Donnelly Garment Workers' Union which were held in May 1937?

A. I'm most positive I did.

Q. How were you notified of those meetings?

A. By the instructor.

Q. Were those meetings during working hours or after working hours?

A. During working hours.

Mr. Reed: That is the month of May, is it?

Miss Weyand: Yes.

Mr. Reed: I can't hear back here.

Trial Examiner Batten: Read the last two or three questions and answers, please.

[fol. 6585] (Thereupon the last three questions and answers were read by the reporter.)

By Miss Weyand:

Q. Do you remember attending a meeting at which there were no chairs? A. I do.

Q. How do you remember that?

A. Because it was dreadfully warm— There was one girl fainted, possibly two, and I felt very faint myself, and I leaned against the freight elevator shaft, because it was cool, and remained standing there during the meeting.

Q. Did you return to work after that meeting?

A. Yes. I was the first one on the elevator going up and was in my section the first one, but I didn't go back to work until the other girls were on the floor.

Q. Did your instructor check up on your attendance at the meeting?

A. Yes, two or three days later.

Q. What did she say to you?

A. She came to me and asked me if I attended the meeting, that some of the girls in the section said I was on the floor when they came back and that I hadn't attended the meeting.

Q. Who was the instructor who did that?

A. Frances Morrison.

Q. State what effect, if any, your instructor's inquiry about your attending the meeting had upon you with reference to your feeling free to attend or not attend subsequent meetings of the Donnelly Garment Workers' Union?

A. Each time thereafter I went down with my instructor and always sat in the same row of seats that she did.

Q. I find you Board's exhibit No. 18, which appears in the Circuit Court of Appeals record at page 4709 and following, and ask you if those minutes correctly set forth the occurrences at the meeting you have just referred to.

Trial Examiner Batten: What is the number of that?

Miss Weyand: Board's exhibit No. 18.

Mr. Langsdale: Is that 18-A to 18-J, inclusive?

Miss Weyand: Yes.

Trial Examiner Batten: Do you want the witness to read the entire—

Miss Weyand: To look at it as much as she needs to to answer my question.

Trial Examiner Batten: Have you shown this to the witness before, as I suggested to other counsel?

Miss Weyand: Yes, I have.

A. Yes, these are mainly correct.

Mr. Reed: I couldn't hear the answer.

Trial Examiner Batten: Will you read the answer?

a. (Thereupon the last answer was read by the reporter.)

By Miss Weyand:

Q. Did you pay the 50 cents that was there voted to donate to Mr. Tyler for his fee?

[fol. 6587] A. Yes, I did.

Q. What month did you pay that 50 cents in?

A. In May.

Q. How do you remember that?

A. Because I have a little book that I kept such things set down in—or some things.

Q. How were later meetings of the Donnelly Garment Workers' Union generally called?

A. By an i. d. m. or by the instructors telling us.

Q. When the meeting was called by an i. d. m., who brought the i. d. m. to the section? A. The basket boys.

Q. Who handed it to the girls? A. The instructors.

Q. What is an i. d. m.?

A. Well, it is a slip of paper designating something of importance, a meeting, or something pertaining to work or other—

Q. Are notes passed from one girl to another in a section called i. d. m.'s? A. No.

Q. Can girls get up and go to the phone any time of the day they wish? A. No.

Q. What phones can the girls use?

[fol. 6588] A. Well, there is a main phone on seven and one on the first floor that they can use at noontime or after work:

Q. Can the girls use the department phones? A. No.

Q. Is your answer in reference to the phones a statement of the condition that existed during the whole time you were at the Donnelly Garment Company? A. Yes.

Q. What was Rose Todd's position with the company?

A. I asked several times but was never told what her position was.

Trial Examiner Batten: You say the entire time that she was at the Donnelly Garment Company? Did this witness testify as to when she left there or—

Miss Weyand: I don't believe she did.

By Miss Weyand:

Q. Will you state when you left the Donnelly Garment Company?

A. The 1st of September, 1941.

Q. And you worked there continuously from 1936 until 1941?

A. Yes.

Trial Examiner Batten: Of course, that question is limited to July 15, 1939?

Miss Weyand: Yes.

Miss Weyand: Did Rose Todd ever come around to your section inquiring whether you had enough thread, [fol. 6589] trimmings, bindings, notions, or other supplies?

A. No, she did not.

Mr. Reed: Just a moment. What was that question?

Trial Examiner Batten: Read the question and answer, please.

(Thereupon the last question and answer were read by the reporter.)

By Miss Weyand:

Q. Did you ever see Rose Todd wear a uniform?

A. No.

Q. What was Lena Tyhurst's position in 1936 and 1937?

A. She was over the instructors.

Q. Did you consider that the instructors were supervisory employees? A. Yes, I did.

Q. Why did you so consider them?

A. Because they had full charge of giving out the work and who they would give it to, and of laying off the girls or saying who would be called back.

Q. When you were working seasonally at Donnelly's, who told you what days to come to work?

A. The instructors.

Q. Did the instructors send girls home when work was low? A. Yes.

Q. Did your instructor ever keep you working when [fol. 6590] other girls were sent home? A. Yes.

Q. Could you give an instance of that?

A. At one time when I was working at hand sewing under Carrie Abrams, she was sending the girls home as they finished their bundles, so I thought, likewise, when I finished my bundle I would be sent home. So, when I finished mine she said, "You don't want to be sent home, do you?" So, she brought me more work.

Q. Could an instructor get a girl transferred to her section?

A. Yes.

Q. Do you know of such an instance?

A. Well, the one time—at this one particular time Mrs. Bogart, in dividing, had asked for me and had me sent to her section.

Trial Examiner Batten: Now, the last two questions—there is no time set on either of those instances.

By Miss Weyand:

Q. What year did this incident with Mrs. Bogart occur?

A. In 1937.

Q. In reference to when, with Carrie Abrams?

A. That would be an earlier date than 1937.

By Trial Examiner Batten:

Q. Well, when?

A. I'm sorry— That possibly was 1934.

[fol: 6591] Q. 1934?

A. Yes, it must have been.

Trial Examiner Batten: Well, I think that certainly is beyond the time involved. It may be stricken.

By Miss Weyand:

Q. I want to ask: Did that condition with regard to the instructors' duties continue unchanged during the entire time you were working for the Donnelly Garment Company?

A. Yes.

Trial Examiner Batten: The incident in 1934 may be stricken.

By Miss Weyand:

Q. If a girl did not make her guarantee was she notified of that fact?

A. Yes.

Q. Who notified her?

A. The instructor. Sometimes they were called to the office, but most generally the instructor told them.

Q. Where did the instructors eat?

A. Well, after 1937 there was a little room built at the end of the cafeteria and the instructors ate in that little room.

Q. And before 1937 where did they eat?

A. Well, o

Mr. Reed: I think that is going far afield. It is rebuttal of nothing.

[fol: 6592] Trial Examiner Batten: She may answer.

By Trial Examiner Batten:

Q. Before that time where did they eat?

A. The cafeteria was on seven, and it was the first few tables that they usually sat at.

By Miss Weyand:

Q. Who besides the instructors ate in this room established in 1937, thereafter?

A. The thread girls, and sometimes Mr. Baty—

Mr. Reed: I can't hear.

Trial Examiner Batten: The thread girls and sometimes Mr. Baty, did you say?

The Witness: Yes.

Trial Examiner Batten: Will you please keep your voice up?

By Miss Weyand:

Q. Where did Mrs. Tyhurst eat?

A. In this room with the instructors.

Q. Did Mr. Boozell ever work in the hand sewing section with you?

A. He did not.

Q. Do you know Mr. Weaverling?

A. Yes, I do.

Q. Did he ever work in the hand sewing section with you?

A. No.

Q. Did Rose Todd work in the hand sewing section during May 1937?

[fol. 6593] A. She did not.

Q. What was Helen Little's position in 1937 and 1938?

A. She was the instructor over the notions department.

By Mr. Langsdale:

Q. Pursuing that eating arrangement, did you ever see Rose Todd eating lunch?

A. Yes.

Q. Where did she eat?

A. She ate in that little room and at various places up on the floor of the cafeteria.

[fol. 6594] Trial Examiner Batten: Miss Weyand, the other day you said you thought you would take 2 days, and in an informal conference before recess Mr. Langsdale spoke about a number of witnesses. Now, what are your plans, Miss Weyand?

Miss Weyand: At the time I made the statement, I had no idea a couple of the witnesses would be cross-examined with the great length and consume the amount of time that was taken. I am very certain it won't take very much longer after this witness is completed. I would not want to make a statement, until she finishes her evidence, as to whether I have two, three or four witnesses, or perhaps no more witnesses.

Trial Examiner Batten: Mr. Langsdale, what did you mean by your statement? You realize, don't you, that you are under the same restrictions as Mr. Tyler. I asked you to cooperate with Board's counsel, and certainly I am not going to permit an unlimited amount of witnesses here.

Mr. Langsdale: Well, the witnesses in this case have so far been all Board's witnesses. I haven't put on any witnesses whatever. Whatever witnesses are put on will be the Board's witnesses. I haven't conferred with Miss Weyand about how many more witnesses she is going to put on. I would say that I don't know how long the cross-examination of this witness will take, but I would say that at 2 o'clock we ought to be able to make an announcement.

Trial Examiner Batten: Well, of course, I think that [fol. 6595] you certainly are approaching the point where I am inclined to tell you that I am not going to listen to any more witnesses.

Now, if you want to be prepared, both of you, to advise me at 2 o'clock, I will pass on it at that time.

• • • • • •

Cross-Examination.

By Mr. Hogsett:

Q. Mrs. Stevens, I want to go to the ~~subject of the~~ reason for the formation of the Donnelly Garment Workers' Union. Did fear have anything to do with that?

A. Not to me, it didn't.

Q. Were you in touch, through the press and otherwise, with the announced plan of the International Ladies' Garment Workers' Union, to organize the Donnelly plant?

A. Well, yes.

Q. You remember, do you not, that as of November 9, 1936, the general executive board of the International in Washington,—that is, Mr. Dubinsky, Mr. Antonini, Mr.

Katowsky, Mr. Feinberg, Mr. Levy, Mr. Cohen, and Mr. Perlmuter, and the other high officials of the International, formally announced their intention in the early future to organize every plant in the United States that was unorganized, and that, for the particular purpose of concentrating on the Donnelly Garment Company plant, they were going to open a special office in Kansas City? You remember that in the press, don't you?

[fol. 6596] A. Something to that effect.

Q. Then you recall, as of February 26, 1937, that Mr. Perlstein, who in the press was identified as Southwest Regional Director of the International announced formally the intention of the International to organize the Donnelly employees, and that as soon as they had enough members they would call a strike in the Donnelly plant? Do you remember that?

A. Something to that effect.

Q. Now, that preceded by just 4 days the passing from section to section of the document dated March 2 which you say you signed?

Mr. Langsdale: What preceded?

Mr. Hogsett: The Perlstein announcement.

Mr. Langsdale: The article of March 26 — I mean February 26?

Mr. Hogsett: That is right, February 26.

Trial Examiner Batten: Well, what you are asking the witness is if that is correct.

Mr. Hogsett: If she does not recall the passing of this paper from girl to girl through the section followed just 4 days after Mr. Perlstein's announcement of an intention to call a strike as soon as the International would get enough employees.

By Mr. Hogsett:

Q. Don't you remember that?

[fol. 6597] A. I know it was just before this petition was signed.

Q. Now, you recall, do you not, the speech reported in the press as having been made by Mr. Dubinsky in Kansas City on March 6, wherein substantially he said that "In a

few days Reed —" meaning Senator Reed — "would receive a polite letter from the International, demanding a conference; and that if he failed to answer this, the International would start its campaign"? Do you remember that?

A. Not definitely.

Q. I am substantially quoting the language to aid you, if it does aid you. Do you remember something to that general effect?

A. Something about it, but not just definite facts. Something to that effect.

Q. I have substantially given it as you remember reading it, is that right?

A. Well, yes.

By Mr. Hogsett:

Q. Now, were you, at that time, that is to say in February and March of 1937, contented with conditions in the plant?

A. Yes, I was.

Q. Did you want any outside organization calling a strike in that plant then?

[fol. 6598] A. I perhaps hadn't given it a thought.

Q. As you now look at it; if you were contented, as you say you were, was your mental condition such at that time, as you now look back at it, that you wanted Mr. Perlstein or anyone else representing this organization, to call a strike in your plant? Did you want that?

A. A strike would have to have a purpose, and that purpose would make the reason.

Q. Well, I am throwing the thing wide open. Did you want a strike called in that plant for any purpose or any reason on earth? A. Well—

Trial Examiner Batten. At that time?

By Mr. Hogsett:

Q. At that time?

A. Well, no, it wasn't necessary at that time.

Q. There wasn't a single grievance that you knew anything about, that any employee had with that company, was there? A. That I couldn't answer.

Q. I am also talking about that time—

Trial Examiner Batten: That you knew of?

By Mr. Hogsett:

Q. Did you know of a single grievance that any one of the employees at that plant had at that time against the Donnelly Garment Company?

A. At what date are you speaking?

Q. I am speaking of the time in February and March of [fol. 6599] 1937 when these two statements were made; one by Mr. Perlstein and the other by Mr. Dubinsky?

A. Well, there was no reason for a strike at that time.

Q. None in the world that you knew anything about, was there?

A. Not that I knew about.

Q. All right. This meeting of March 18—no, strike that, please.

Did you know that in fact the International, through Mr. Perlstein and Mrs. Wave Tobin did, in fact, write a letter, dated March 9, to the Company, demanding a conference for the purpose of a discussion of collective bargaining through the International? You learned of that too, didn't you?

A. Something to that effect.

Q. And that letter you say—I don't know that you said it, I don't believe you did—but that letter was read at the meeting of March 18, was it not, at which Mrs. Reed made a speech? A. I don't remember.

Q. Very good. Now, do you know from the press of the campaigns or drives that the International was making against the Gernes Garment Company, the Gordon Brothers Manufacturing Company, and the Missouri Garment Company, in March and April of 1937?

A. Yes, I did.

Q. The fact was that those strikes, or those drives, I will say, against those three plants were of such a character [fol. 6600] that they became front page news in the Kansas City papers and remained front page news for about a month? Isn't that right? A. Yes.

Q. Did you note from those day by day records in the press what was going on down there? A. I did.

Q. Pardon me, I haven't finished. That the International pickets were kicking, and beating, and pulling the

hair, and tearing the clothes of employees seeking to enter those plants? You saw that, didn't you?

Mr. Langsdale: Just a minute there. Read the question.

Trial Examiner Batten: You mean she saw the articles, or saw the hair pulling?

Mr. Hogsett: In the paper, saw the accounts of it in the paper.

A. I did.

By Mr. Hogsett:

Q. Did you also see in the paper that 60, approximately 60, of those strikers moved into the entrance, the common entrance, into those three plants, and arranged a sit-down strike and remained there for about 3 days, until, because of sanitary conditions, the Health Department forced them to move? Do you remember reading that?

A. No, I don't recall that.

Q. Didn't you? All right. Did you not see pictures of the sit-down strikers, with their cots in the entrance of [fol. 6601] those plants? A. I don't remember that.

Q. I beg your pardon? A. I don't remember that.

Q. As a garment worker, you did, however, did you not, read with reasonable care the day by day chronicle of these events as they appeared in the press?

A. Yes, I was concerned, more or less. I had a daughter that was working in the Gernes plant at that time.

Q. Yes, ma'am, in the Gernes plant, you had a daughter? A. Yes, sir.

Q. Was that daughter allowed to work? A. Yes.

Q. Did she run through the picket lines?

A. She came up out in front. Mr. Gernes came out and got them and took them in. She went through it without a scratch.

Q. She got through without a scratch?

A. The whole time.

Q. Now, you say the whole time. As a matter of fact, finally they had to quit work, didn't they, at those plants?

A. Well, while Mr. Gernes was negotiating, they didn't work.

Q. Oh well, yes, and for some time before he started negotiating, they were put in such a state that they couldn't work, isn't that a fact?

A. No, I don't remember that, exactly.

[fol. 6602] Q. Did your daughter report to you that she had to pass through lines of pickets with police following and by force holding these pickets away from the employees? Your daughter, your own daughter told you that, didn't she?

A. She was not so very concerned. She seemed to take it as a laughing matter.

Q. It was a joke with her?

A. She would look out the windows and look down. She wasn't so worried.

Q. She wasn't? Well, did she tell you of the fact that she had to go through lines of pickets, that were being restrained by police?

Mr. Langsdale: Just a minute. I object to that as an assumption—assuming in his question that that is a fact.

Trial Examiner Batten: Well, the question to the witness is, did she tell you that?

Mr. Langsdale: He said, did she tell her the fact.

Trial Examiner Batten: The question to the witness is, did your daughter tell you that?

A. That they went through these pickets or whatever they were?

By Mr. Hogsett:

Q. And that the police were there, restraining the pickets or attempting to restrain the pickets? She told you that? A. I don't remember.

[fol. 6603] Q. For how many days or weeks, as the case may be, did your daughter report that she was going to work in that plant under those conditions?

A. I couldn't say how many days.

Q. I don't ask for an exact statement, but an approximate statement. Wasn't it nearly a month?

A. It could be.

Trial Examiner Batten: Under what conditions?

Mr. Hogsett: Under the conditions that the daughter described, where she would go through pickets being held back by police.

Mr. Langsdale: You are assuming the daughter described that. She said she didn't remember any such description from her daughter at all.

Trial Examiner Batten: I think the record will indicate what the witness testified to; and Mr. Hogsett said "under the conditions described by the witness". So let's proceed.

By Mr. Hogsett:

Q. Now, did you also read in the press an announcement over the name of Mr. Perlstein in relation to the Gernes, Gordon, and Missouri plants, that these manufacturers either will sign a union contract or they will never again manufacture dresses? Did you read that?

A. I don't recall.

Q. You don't recall that? You know, did you not, that the announced plan of Mrs. Wave Tobin and other International [Sd. 6604] tional representatives was that the Donnelly plant was next on the list, and that when they got down to the Donnelly plant, the methods used there would be the same as those used at the Gernes, Gordon, and Missouri drives? You heard that, didn't you?

Mr. Langsdale: I object to that as assuming that Wave Tobin or anyone else ever said such a thing at all.

Trial Examiner Batten: Well, of course, the question to the witness is whether she knew that or not.

A. I don't remember that.

Mr. Hogsett: You don't remember that. In any event, the formation of the Donnelly Garment Workers' Union occurred on April 25—

Trial Examiner Batten: 27th.

Mr. Hogsett: 27, 1937, at the time—at a time when this violence had been going on at the three other plants for weeks, and it was still continuing.

Mr. Langsdale: Just a minute. I object to that. There is no such evidence. That isn't a fact.

Mr. Hogsett: Mr. Langsdale, will you kindly not suggest to the witness anything, please. If you have an objection,—

Mr. Langsdale: I am objecting to his assuming that there was any newspaper article or anything else, or any word of mouth or any other sort of information that these strikes were going on as late as the 27th day of April.

[fol. 6605] Mr. Hogsett: What is the fact? I don't care whether it was a few days before or what.

Trial Examiner Batten: Will you read the question to the witness, please, Mr. Reporter?

(Thereupon the last question was read by the reporter, as follows:

"Q. In any event, the formation of the Donnelly Garment Workers' Union occurred on April 27, 1937, at a time when this violence had been going on at the three other plants for weeks, and it was still continuing.")

Trial Examiner Batten: You may answer.

A. Well, it was just after—

Trial Examiner Batten: What was your answer?

A. It was just after the trouble at the Gernes and Gordon plants.

By Mr. Hogsett:

Q. All right. How soon after?

A. I don't remember.

Q. Shortly after, within a few days afterwards, three or four or five or six days?

A. Maybe a week or two.

Q. A week or so, or two? A. A week or two.

Q. You say, do you, that fear, personal fear of personal violence to you, played no part at all in your choice to belong to the Donnelly Garment Workers' Union, and help organize it?

[fol. 6606] A. Absolutely not.

Q. You were entirely fearless, were you, about the matter? A. I had no fear of it.

Q. By the way, what was your husband then, an organizer for the union?

Mr. Langsdale: I object to that as incompetent, irrelevant and immaterial.

Trial Examiner Batten: Just a moment, Mr. Hogsett. I am not going to permit the witness to answer that question. I think Mr. Langsdale wanted to examine one or two of the respondent's witnesses along that line. I think Mr. Tyler or Mr. Lane, the other day, wanted to proceed on this. I don't believe I am going to permit an examination of these married women as to their husbands or their businesses. I think I stated in the first instance that in this day and age I think a woman has a certain degree of independence, and her husband's views can't necessarily be attributed to her.

Mr. Hogsett: Your Honor, I would agree with that, but I think that there is here a distinction; that is to say, that this is cross-examination and that, without suggesting to the witness the exact reason why I think this is pertinent, I think that Your Honor will see on reflection that these answers that she has given make this particular question a pertinent one here, even though you may have excluded it elsewhere.

Trial Examiner Batten: No, I am not going to relax on [fol. 6607] it, Mr. Hogsett.

Mr. Tyler: Mr. Examiner, we feel that while your position is correct as to the ordinary case, where the husband's position would be one which is wholly occupied with the promoting of a certain view, that might affect the witness.

Trial Examiner Batten: I don't think so. If I did, I would be in a position where I would have to say, then, that Senator Reed's views would necessarily have an effect upon Mrs. Reed, and I think I have taken the position in this hearing, right from the beginning even in July and June of 1939, when Mrs. Reed hadn't testified and Senator Reed wasn't even here, I took the position then that I didn't think that what Senator Reed said or did necessarily would reflect Mrs. Reed's views in the management of her business, and I still contend that my position then and my position now, with respect to the husbands of these people, is correct.

Mr. Hogsett: May we have leave of Your Honor to make a written offer of proof on this subject?

[fol. 6608] Trial Examiner Batten: Let's have the offer of proof here.

Mr. Hogsett: We offer to prove that the witness on the stand that at the time concerning which she has been testifying, namely, in February, March, and April, 1937, and continuously up to the present time, her husband then was and at all such times has been and is now an organizer for a labor union.

Trial Examiner Batten: Well, I'll reject the offer on the basis of what I have just said.

Mr. Hogsett: Yes. Mr. Ingraham says that we desire now to make a similar offer of proof in relation to Geneva Copenhagen.

[fol. 6614] Cross-Examination

By Mr. Tyler:

Q. You were shown some minutes of the meeting of March 18—

Mr. Langsdale: Not March 18.

Mr. Tyler: May 25.

By Mr. Tyler:

Q. (Continuing) —of May 25, I think, by Miss Weyand, and you read them and said, if I remember correctly, that they were substantially correct. Is that correct; was that your answer—or substantially correct? A. Yes.

Q. When did you first see those minutes?

A. Possibly a couple of weeks ago.

Q. And that was the first time in your life you had ever seen those minutes? A. Yes.

Q. The minutes of the meeting described as about 5 years ago? A. Yes.

[fol. 6617] Q. Do you know who wrote those minutes that you identified or that you were shown? A. I do not.

Q. Were you ever told that Elsa Graham Greenhaw wrote those minutes?

A. I believe I've heard her name mentioned.

Q. And you have been told that she wrote those minutes, haven't you?

[fol. 6618] A. Perhaps so.

[fol. 6619] Mr. Tyler: Did you know before that there were two sets of minutes for that meeting?

A. I was told that there was.

Mr. Reed: Who told you?

Mr. Tyler: You say you were told—

Trial Examiner Batten: Now, Senator, let's have one at a time.

Mr. Reed: I was trying to talk to Mr. Tyler.

Trial Examiner Batten: But I could hear you plainly, Senator.

All right, Mr. Tyler.

Mr. Tyler: I think the witness said when she was told, but I'm not sure.

By Mr. Tyler:

Q. Will you tell us when you were first told that there were two sets of minutes?

[fol. 6620] A. Last week sometime, I believe.

Q. And by whom?

A. Well, Miss Weyand and— I believe she was the only one who mentioned it to me.

Q. Were you shown this set of minutes at that time, that you now have in your hand? A. Yes.

Q. And you read both sets of minutes at that time, did you? A. Yes.

Q. Do you know who Marjorie Green was?

A. No, I don't.

Q. Didn't you know that she customarily kept minutes for the Donnelly Garment Workers' Union?

A. I did not know the faces of them then, but I don't remember the names.

Q. Did you state what your present occupation is, Mrs. Stevens, in the record? A. No, I didn't.

Q. What is it?

A. Well, I am an employee of the Marguerite Kers dress shop.

Q. How long have you worked there?

A. Since November of 1941.

[fol. 6621] Q. You are a member of the International Ladies' Garment Workers' Union? A. Yes.

Q. Do they have a closed shop at that plant?

A. Yes, they do.

[fol. 6623] Trial Examiner Batten: Miss Weyand, can you tell me any more about your plans, you or Mr. Langsdale?

Miss Weyand: Well, I can't say until we finish with this witness, whether I will have another witness or not. Possibly I will not. I don't know.

[fol. 6625] By Mr. Tyler:

Q. Mrs. Stevens, it is not my purpose to argue with you about what a closed shop is, but I want to be clear about what you feel that it is. Is it your understanding that in a closed shop, regular employees have to belong to the union in order to hold a job in that shop?

A. Yes, sir.

Q. When did you start working at Mrs. Keyes' plant?

A. In November of 1941.

Q. What is the name of that plant?

A. Marguerite Keyes.

Q. Incorporated?

A. Yes, sir.

Q. Marguerite Keyes, Incorporated?

A. Yes.

Q. In November of 1941?

A. November 1941.

Q. And what position have you held since you have worked there?

A. Well, I don't-- I work there as an operator steady; [fol. 6626] and I have inspected, and at present I help out over the machines and over the materials and in the cutting department and just any place where I am needed.

Q. You have been an inspector there, have you?

A. Yes, sir.

Q. From what date to what date, about?

A. Well, say, from the first of January until possibly the last of March.

Q. 1942?

A. Yes.

By Mr. Tyler:

Q. Have you had any other job with Marguerite Keyes?

A. No.

Q. You have been an instructor?

A. Not in that capacity, of instructor.

Q. Have you done the work of an instructor?

A. Maybe, various times.

[fol. 6627] By Trial Examiner Batten:

Q. Miss Witness, you said, "maybe." What did you mean when you said, "maybe"?

A. I don't remember where I used that.

Trial Examiner Batten: Mr. Reporter, will you read back to the question, "Have you done the work of an instructor?" I think the witness said, "maybe."

(Thereupon the question requested and answer thereto were read by the reporter, as follows:

"Q. Have you done the work of an instructor?

"A. Maybe, various times.")

By Trial Examiner Batten:

Q. What did you mean, maybe?

A. The work I did maybe would have been classed as inspector work or instructor's work.

Q. What work do you mean?

A. Well, that would be maybe showing a girl about a certain class of work or something. I believe that would be an instructor's duty. I have done that at times.

[fol. ~~6628~~] Q. Do they have a head cutter in that factory?

A. Yes, they do.

Q. They have what they call a head designer?

A. Well no, not at the present time.

Q. When did you join the International Ladies' Garment Workers' Union, Mrs. Stephens?

A. In August, 1941.

Q. Have you been a member of it ever since?

A. Yes, sir.

Q. Continuously?

A. Yes, sir.

[fol. 6629] By Mr. Tyler:

Q. Have you been the chairwoman of the local International organization in that plant?

A. Yes.

Q. When did you begin to be chairwoman there?

A. Well, shortly after entering the shop, possibly a month later.

Q. About the end of 1941?

A. I believe so.

Q. And you were chairwoman until what date?

A. I believe it was in March.

By Trial Examiner Batten:

Q. 1942? A. In '42.

[fol. 6630] Q. Mrs. Stephens, I show you Board's Exhibit 1-RRRR, which is an offer of proof by the intervener, and on the first page of signatures, in the first column, I show you what appears to be your name. Is it the fourth name from the bottom, is that your signature?

A. It is.

Q. Now, I am going to read you — you may read it if you desire, and I would like to have you read the whole thing. But before you do, I am going to call your attention to one or two sentences, beginning on the second page:

“That the undersigned had all seen or heard of articles in the newspapers concerning the strikes at Gordon, Gernes, and Missouri; that as a result of this information the attitude of mind of the undersigned parties and of the employees of the company in general was one of apprehension and uneasiness and fear, that the employees of the Donnelly Companies would be shortly subjected to similar violence and intimidation, to that which they understood and believed was being carried on in connection with the Gordon, Gernes, and Missouri strikes; that such state of

mind and apprehension was one of the causes of the action of employees in ratifying and in approving the action of [fol. 6631] certain employees in employing legal counsel in connection with investigation as to whether an injunction could be secured, giving the Donnelly companies legal protection against such anticipated violence."

Was that statement as to yourself true or false when you made it?

A. If I made it, -- well, that isn't my belief, so it would be false.

Q. Was it false at the time you made it?

A. I don't know that I made it.

Trial Examiner Batten: You mean at the time she signed it, is that what --

A. At the time that was signed.

Mr. Tyler: I think that is the time she made the statement.

By Mr. Tyler:

Q. I will ask you to note the last paragraph, which says:

"The undersigned state that they are members of the Donnelly Garment Workers' Union, and joined said union and have at all times since remained members thereof solely of their own free will, choice and preference, and that they have not been influenced by any threats, coercion or pressure of their employer or any representative of said employer, and that they have no knowledge of any incidents in which the employer or any representative of the employer has exerted pressure, intimidation, coercion or [fol. 6632] any other influence upon the undersigned or any other employees to join the Donnelly Garment Workers' Union, or to stay out of any other labor union."

Was that true or false at the time you made it?

A. It was false.

Q. At the time you made it it was false, is that your answer?

A. As to my state of mind about it.

Q. In spite of your testimony on direct and cross, you now say that you had no feeling of fear or apprehension in respect to violence whatever?

Mr. Langsdale: What do you mean, "In spite of testimony on direct and cross"? She said she had no fear.

Trial Examiner Batten: The question to the witness now is whether or not she had any fear or apprehension at that time.

Mr. Tyler: At the time she made it.

Trial Examiner Batten: At the time you signed this document.

A. Yes.

By Trial Examiner Batten:

Q. What is your answer?

A. I did not.

By Mr. Tyler:

Q. When you stated this morning that you went along with the Donnelly Garment Workers' Union at the beginning because you thought it would mean your job, did you mean that you believed that at that time you would be discharged if you had not joined?

[fol. 6633] A. Yes, that is what I believed.

Q. What did you base that belief on?

A. The Fern Sigler incident.

Q. Did you believe that the overwhelming majority of the employees wanted this union and would get a closed shop contract, and for that reason you would have to join or lose your job?

Mr. Langsdale: Just a moment. Will you read that question?

.(Thereupon the last question was read by the reporter.)

Mr. Langsdale: I object to the question as being double-barreled, whether she believed that the overwhelming majority wanted a union, and the other is that they would get a closed shop. Her answer might be to one or the other.

Mr. Tyler. I think they both have to go together if they make a reason for feeling that she might lose her job.

By Trial Examiner Batten:

Q. Do you understand the question?

A. I believe I do.

Trial Examiner Batten: You may answer it.

A. No, not in that sense of the word, about the overwhelming majority. It was because that we went in that meeting unprepared, and they just as much as forced us to join it.

By Mr. Tyler:

Q. What do you mean by "just as much as forced you to join it"?

A. We were handed cards and they told them to count [fol. 6634] them and see that every card was accounted for and handed back.

Q. And the fact that the cards were accounted for, in your mind, means that you were forced to join?

A. Yes.

Q. Weren't you told in that meeting that you were to do as you pleased; and nobody was to sign a card that didn't want to, or if anybody wanted to think is over, he was to keep it?

A. Perhaps so, but we knew differently.

Q. I show you intervenor's exhibit 20-A to KK on page 6090 of the record, and show you what purports to be your signature, as being the sixth from the bottom in the left-hand column, and ask you if that is your signature.

Trial Examiner Batten: That is intervenor's 20, rejected?

Mr. Tyler: No. 20, rejected; the page in the record is 6090.

By Mr. Tyler:

Q. Will you read the statement above the signature?

A. Well, even this first and second part was not my wish.

Q. You have said you signed it?

A. Yes.

Q. Was that statement true or false when you signed it?

A. It was false, because it wasn't my free wish to join it, or what I chose to do of my free will.

Q. You understood that you swore to it at that time?

A. Yes, but it wasn't my wish, because I called the [fol. 6635] Ladies' Garment Workers that night and had them come out and signed the other card, the one that was of my own free choice.

Q. When did you again talk with the International Ladies' Garment Workers' Union? A. That night.

Q. You had never been in touch with them before?

A. No, I called them immediately upon going home.

Mr. Hogsett: What date is that?

A. I believe I didn't make myself clear. The night the company union was formed, that was not my free wish, joining the Donnelly Garment Workers Union, because upon going home that night, April 27, I called the Ladies' Garment Workers' Union and signed a card that night.

Mr. Tyler: And that was the night of the signature that you appended to this instrument?

Mr. Langsdale: No, you don't get it.

Trial Examiner Batten: She said the April 27—April 27, she called up the union.

By Mr. Tyler:

Q. On April 27 you called the union, that night?

A. Yes, sir.

Q. And obtained a card from them and signed it?

A. Yes.

Q. And on July 14, 1941, if that is the correct date of this instrument, you swore to a contrary set of facts, did [fol. 6636] you not? A. Yes.

Trial Examiner Batten: What was your answer?

A. I said—

Miss Weyand: I believe you read the date of the notary's commission expiring instead of the date on which this was signed.

Mr. Hogsett: I have a little too much advice here.

Mr. Langsdale: Not enough.

Mr. Tyler: The 2nd of June, 1930.

Miss Weyand: 1939.

Mr. Tyler: Did you talk with your husband before you called the International representative on the night of the organization meeting?

Mr. Langsdale: I object to that as immaterial. It doesn't prove—tend to prove or disprove any issue in the case.

Trial Examiner Batten: Sustained.

By Mr. Tyler:

Q. You stated you couldn't find out what Rose Todd did. Whom did you ask in your endeavor to find out what Rose Todd did?

A. Oh, girls in my section and various ones that I came in contact with.

Q. What ones? A. Well—

Trial Examiner Batten: Can you give us the names of any people?

[fol. 6637] A. I don't believe I can give any definite names now, as I asked several at that time.

Mr. Tyler: None of them knew she was a thread girl?

Mr. Langsdale: Just a moment. I object to that as assuming she ever was a thread girl.

Trial Examiner Batten: It may stand. The answer was no.

By Mr. Tyler:

Q. You stated you paid 50¢ towards attorney's fees sometime in May, I believe? A. Yes, sir.

Q. To whom did you pay that?

A. To the representative in my section.

Q. What was her name, do you remember?

A. Neva Reason.

Q. And you remember the place you paid it to her, the place you were? A. In the section.

Q. Did you attend a meeting toward the end of March in which a large number of employees contributed 50¢ toward the attorney's fees? A. I did not.

Q. You knew a substantial number of employees had contributed sometime before you did, didn't you? A. No.

[fol. 6638] Q. You had never been told that? A. No.

Q. Does the chief cutter belong to the union, at the Marguerite Keyes, Incorporated, plant? A. Yes, sir.

Q. Is the correct name "head cutter" or "chief cutter"? A. We only have one.

Q. Which do you call him, "head" or "chief"? A. Just a cutter.

Mr. Langsdale: What was the answer?

A. Just a cutter.

Trial Examiner Batten: Miss Weyand?

Miss Weyand: I wanted to offer this in evidence: the membership card. I would like to have it marked as Board's exhibit No. 40, for identification.

Trial Examiner Batten: Board's Exhibit 41, you mean.

(Thereupon the membership card above referred to was marked as "Board's exhibit No. 1, Witness Stevens," for identification.)

Redirect Examination

Miss Weyand: Mrs. Stevens, I hand you Board's exhibit 41, for identification, and ask you to say when you received that card. A. April 28, 1937.

Trial Examiner Batten: April 28, 1937?

Mr. Reed: I couldn't hear her.

Miss Weyand: How did you happen to receive that card?

[fol. 6639] A. By signing an application card the evening before.

Q. Did you pay any amount when you signed the application card the evening before? A. Yes, I did.

Miss Weyand: I offer this in evidence as Board's exhibit 41.

Trial Examiner Batten: If there is no objection, it will be received.

(The membership card heretofore marked "Board's Exhibit No. 41, Witness Stevens," for identification, was received in evidence.)

Recross Examination.

By Mr. Langsdale:

Q. Mrs. Stevens, you stated that when you got away from the Donnelly Garment Company on the evening of [fol. 6640] the 27th of April, 1937, after you had signed the Donnelly Garment Workers' Union card, you called the International Ladies' Garment Workers' office?

A. As soon as I got home, I called.

Q. And did you get someone on the telephone then?

A. Yes, I did, someone in the office.

Q. And do you know who it was?

A. No, I couldn't say now who it was.

Q. Did you meet a Miss Jane Palmer?

A. She is the one that came to my house that night.

Q. And did you tell her that you had just signed the Donnelly Garment Workers' Union card?

A. Yes, sir.

Q. And that you wanted to join the I. L. G. W. U.?

A. Yes.

Q. You got this card the next day? A. Yes.

Q. Now, I believe you state that at the Keyes shop they have just one cutter?

A. I didn't understand that.

Q. Just one cutter at the Keyes shop?

A. Yes, sir, just one.

Q. He has no one working under him?

A. He has a spreader.

Q. A spreader?

[fol. 6641] A. Yes, sir.

Q. But no other cutter? A. No.

Trial Examiner Batten: What do you mean by a spreader? One who spreads out the goods on the table?

A. The material on the table.

[fol. 6642] Q. Who stamped this card for you, if you know?

A. It was delivered to me by Miss Palmer. I don't know.

Q. Where was it delivered to you, if you remember?

A. At my home.

Q. And what time of day? A. In the evening.

Q. After you had gotten home from Donnelly's?

A. Yes.

Q. Now, you stated that you paid the 50¢ in May, 1937, to the representative in your section whom you named. What did you mean, "the representative"?

A. The Loyalty League representative, I believe.

Q. You stated that you were—you were asked a question, and stated that you didn't know Mrs. Greenhaw had refused to sign the March 2 document, and that she was not discharged. Did you know that Sylvia Hull refused to sign it, and she was subjected to the demonstration of April 23? A. Yes, sir.

Q. There was some question asked you about busses being furnished by the Donnelly Garment Company in March or maybe part of April, 1937. Had there been any demonstration by the I. L. G. W. U., of any kind or character, around the Donnelly plant at the time these busses were used?

A. No, there hadn't been.

Q. These strikes that were going on were at 26th and [fol. 6643] Walnut, and 26th and Grand?

A. Yes, sir.

Q. Is that true? A. Yes.

Q. And the Donnelly plant was where?

A. At 19th and Walnut.

Q. 19th and Walnut. So it was eight blocks from the Donnelly plant where the strikes were going on?

A. Yes, sir.

Q. Is that a built-up part of the city? A. Rather, yes.

Q. And congested? A. Very much.

Q. There was 8 blocks that separated the plants. Now, did you see any reason for having busses picking up the Donnelly workers and bringing them to the plant, and taking them home, at the time that was done?

A. I did not.

Q. There was no I. L. G. W. U. pickets around the Donnelly plant? A. No.

Q. None ever had come there, had they, to your knowledge? A. No.

Q. Did you know why the Donnelly Company was hauling their employees back and forth in busses at a time [fol. 6644] when there was no demonstration, no violence of any kind or character?

A. To create a fear, I suppose.

Mr. Tyler: I move that be stricken out as a conclusion. She says "she supposes". That means she doesn't know.

Trial Examiner Batten: I think it is clearly a supposition, but it may stand.

By Mr. Langsdale:

Q. What did you mean by that, Mrs. Stevens?

A. Well, to keep an agitation among the girls.

Q. That is, you thought the Donnelly Company was doing it for that purpose? A. I do.

Mr. Tyler: We object to this whole line of questioning. It is obviously based on a supposition of this witness. She said she didn't know but that she supposed. It is improper for her conclusion to be admitted in evidence.

Trial Examiner Batten: It may stand.

By Mr. Langsdale:

Q. Well, was that your feeling about the busses, Mrs. Stevens? A. Yes, it was.

Q. Did you feel any fear or necessity to ride in busses?

A. No, I didn't.

Q. Did you feel, in the spring of 1937, that you had a right to belong to any labor union that you might choose? A. Yes, I did.

[fol. 6646] By Mr. Langsdale:

Q. You joined the I. L. G. W. U. on April, and signed an application April 27, 1937? A. I did.

Q. Did you let anyone connected with the Donnelly Garment Workers' Union or the Donnelly Company know that you had joined?

A. No, I sealed it and placed it in the safety box.

[fol. 6647] Recross Examination (Resumed)

Mr. Hogsett: Mrs. Stevens, as I have caught your testimony, it appears that for about 4½ years, that is from April, 1937, until sometime in the summer or fall of 1941, I think November, you were off and on member of two unions, the Dounelly Garment Workers' Union and the International Ladies' Garment Workers' Union. Have I caught that straight? That is right, isn't it?

A. Yes, sir.

[fol. 6648] Q. May I have that card again, please? You say that this exhibit, Board's exhibit 41, is the card you took out on the International on April 28, 1937? You just paid the dues for one time, and then sealed it up and put it in a safety deposit box, and paid no more dues on that card? Have I caught that part of your testimony correctly?

A. Yes, sir, that is correct.

By Mr. Hogsett:

Q. Did you mean a safety deposit box?

A. No, just a steel box.

Q. What was your point or reason in taking out this card in April of 1937, and paying dues just once, and then sealing up the card? Were you making some kind of evidence, or were you really joining the union with the view of being a member? Which was it?

A. Joining a union and being a member, but you don't [fol. 6649] pay dues to two unions, and the Ladies' International Garment Workers' Union—

[fol. 6650] Q. Well now, let's see. You did join the union again? Or maybe I haven't that correctly—what did Mr. Langsdale ask you about August, 1941? Didn't you say you joined again then? A. Yes.

Q. All right. Did you take out another card at that time?

[fol. 6651] A. Yes.

Q. Where is that?

A. I don't have it. The chairlady has it.

Q. You don't have it, the chairlady has it?

Trial Examiner Batten: The shop chairlady has it, I believe she said.

A. She does have it.

By Mr. Hogsett:

Q. When you took out that second card in August, 1941; did you seal that up and put it away? A. No, I did not.

Q. It was only this first card, of April '37 that you sealed up after paying dues once, and put away in a box?

A. Yes.

Q. Now, I notice on this card, Board's exhibit 41, there is something here about steel workers' drive assessment, and a blank to show how much it would be. Now, how much was it?

A. I had nothing to do with that.

Q. Did you pay that assessment to help the steel workers?

A. I did not. That didn't concern us.

Q. Another blank is "Anti-Nazi Fund" and a blank for so much money. Did you pay that? A. I did not.

Q. And another one is "Joint Board Assessment" and a blank for so much money. Did you pay that assessment?

A. I did not.

[fol. 6652] Q. And still another one is "1932 convention assessment". That would be 5 years before you entered. Did you pay anything on that assessment?

A. I did not.

Q. And still another one is "1934 convention assessment" and a blank indicating dollars opposite that. Did you pay any part of that assessment? A. I did not.

By Mr. Hogsett:

Q. You paid one week's dues and no other dues, and no assessments at all, is that right? A. That's right.

Q. How much were the dues that you paid that week?

A. 35¢.

Q. And how much were these assessments that you did not pay? A. I don't know.

Q. You know what the total dues and assessments in the International were for that year, 1937?

A. No, I don't.

Q. As I recall from former evidence, it would have [fol. 6653] been something like \$18.50. With that statement made by me to you, does that refresh your memory as to what it would be? A. I don't know.

Q. All right. Now, you say you began going to meetings of the International when you joined the second time. Was that what you said? A. Yes.

[fol. 6654] Q. Now, from the time you first took this card, in April 1937, in the International, were you from time to time passing to them information about conditions at the Donnelly Garment Plant for their use in litigation that began in July 1937?

A. I talked to them at various times.

Q. Yes. Now, approximately, for your information, that litigation began in the Federal Court here on the 5th of July, 1937.

Mr. Langsdale: You are talking about the injunction?

Mr. Hogsett: Yes.

By Mr. Hogsett:

Q. From that time on how frequently would you be talking to International representatives, as you say you did? A. There was no occasion to see them.

Q. Well, but you did say you did see them.

A. Only just very seldom, only once or twice a year.

Q. Who would you see once or twice a year during that time after the litigation started?

[fol. 6655] A. I might add, in the first year—I don't know when the preceding year—whether I saw any of them.

Q. Well, you understand, I am only concerned with the time that litigation began, that is to say, when these two parties became adversaries in Court, and I am telling you when that was, July 5, 1937. Now, from that time on, how often would you see representatives of the International regarding conditions at the Donnelly plant?

A. I didn't see them at all regarding conditions.

Q. Well, regarding anything.

Mr. Langsdale: Here, wait a minute. Let her finish her answer.

Mr. Hogsett: I think I did.

Trial Examiner Batten: Did you finish your answer?

The Witness: Yes, I did.

By Mr. Hogsett:

Q. Concerning what did you see them, from time to time, as you say you did?

A. I might just estimate that I saw them three or four times in the balance of the year, or something like that. It wasn't very often.

Q. That is three or four times in the balance of—

A. 1937.

Q. '37. Well, now, let's see. What was happening then in 1937? There was a hearing in July, before Judge Otis on the question of law, and no evidence was offered there. [fol. 6656] There was a hearing on the motion to quash service, and a good deal of evidence was heard November 1 to 8 or thereabouts, and there was a hearing before a three-judge court; with those instances in your mind, can you tell me what you were seeing them about three or four times in the latter half of 1937?

A. Nothing that concerned any of those things.

Q. I see. Well, whom did you see, Mrs. Stevens?

A. Only the organizer.

Q. Who was that? A. Jane Palmer.

Q. Where would you see Miss Palmer?

A. At my home.

Q. She would come to your home? A. Yes, sir.

Q. Would you send for her on those occasions?

A. No, she would drop by.

Q. What would she talk about with you on those occasions?

A. The drive—the union drive, and the girls in the shop.

Q. I am sorry I cut you off there; tell me again what Jane Palmer would talk to you about.

A. About the union drive, and about the girls in the shop, in the Donnelly shop.

Q. She did that about three or four times in the last half of 1937?

A. I would estimate three or four times.

[fol. 6657] Q. You would tell her what she wanted to know, would you? A. Yes.

Q. You knew you were talking to your employer's adversary at that time, did you?

A. I don't quite understand the question.

Q. I mean this: you knew the company and the International were opponents in a lawsuit?

Trial Examiner Batten: You have one question pending.

Mr. Hogsett: I wanted to restate it.

By Mr. Hogsett:

Q. Did you know at the time you were talking to Miss Palmer that your employer and her union, the people she represented, were opponents in Court? A. I did.

Q. You thought that was all right? A. Yes.

[fol. 6662] By Mr. Hogsett:

Q. I think I understood your answer to Mr. Tyler, but I want to be very sure about it. Did you tell him that when you signed this affidavit on the 2nd of June 1939, which he showed you and which appears on page 6690 of the record, that you knew that you were swearing to a false affidavit?

A. I did.

[fol. 6666] Q. In respect to the March 2 paper you signed— Do you know what I mean by that; the one that was passed through the section that has been referred to here as the March 2 paper?

[fol. 6667] A. Yes.

Q. Mr. Langsdale asked you, apparently in an effort to show that you felt you had to sign that,—

Mr. Langsdale: Object to the argument as improper.

Trial Examiner Batten: I will sustain the objection as far as the "effort" is concerned.

By Mr. Hogsett:

Q. Well, at least in that connection, he asked you whether or not you didn't know that another girl who had failed to sign that or refused to sign that paper was Sylvia Hull and, "Look what happened to her." Do you remember that question he asked you? A. Yes.

Q. The fact is, the Sylvia Hull incident occurred some seven weeks after the March 2 paper was signed by the employees, didn't it?

[fol. 6668] A. The incident he referred to was at a later date than the signing of that, yes.

Mr. Hogsett: Exactly. And the Sylvia Hull incident and the Fern Sigler incident each occurred on or about April 23, 1937; isn't that right? A. Yes.

[fol. 6669] Trial Examiner Batten: Mr. Langsdale,—The question is, whether or not either of these incidents, the Sylvia Hull or Fern Sigler incident, had anything to do with her signing this petition of March 2. A. No.

[fol. 6671] How much violence did you think there should be before it would be in order, according to your judgment, for the company to hire busses?

Mr. Langsdale: That is objected to as argumentative. The witness has stated there wasn't any at the time these busses were used.

Trial Examiner Batten: She may answer.

Mr. Langsdale: It is asking for a speculative answer on the part of this witness.

A. That makes it hard for me to answer, my feeling about all of this, the outside union, and all about going through a picket line. Of course, I wouldn't be concerned about going through a picket line.

Mr. Hogsett: You never would go through a picket line; that is what you mean? A. I expect I wouldn't.

[fol. 6672] By Mr. Hogsett:

Q. According to your opinion, would busses have been needed at all, in the absence of actual violence at the doors?

A. No.

Q. Now, you did tell me on cross-examination that you had heard of the threats by International representatives that the Donnelly plant was next on the list and that the methods used there would be the same as those at the Gernies, Gordon, and Missouri plants? You told me that, didn't you? A. Yes.

Q. But according to your judgment, it wasn't necessary [fol. 6673] to get busses there until that threatened violence actually began?

A. There would be no difference in getting off a street-car and going through it or getting off a bus and going through it.

By Mr. Hogsett:

Q. There would be this difference, wouldn't there, that the busses not only brought you to the corner, but they actually brought the employees into the Donnelly property, inside the property lines, and unloaded at the loading dock; isn't that right? A. It's still the same thing.

Q. Is what I have said correct? The Donnelly busses wheeled into—

Trial Examiner Batten: Wait a minute. Let her answer.

A. But they still had to get off the busses and go through some sort of procedure to get into the building.

By Mr. Hogsett:

Q. Let me ask you if the fact is that the Donnelly property lines included the space where the busses loaded and unloaded? Did they?

A. I am still to say whether they were needed or not?

Q. Oh, no, Madam. I am asking—

[fol. 6674] Trial Examiner Batten: The question is, where the busses were unloaded, was it on the Donnelly property? A. Yes, I believe it was.

By Mr. Hogsett:

Q. And of course the streetcars would be unloaded, normally, out on the street; isn't that right? A. Yes.

Q. From the time you joined the International the second time, which I think was August, 1941, you have paid dues to that organization regularly since then?

A. Yes.

Q. What do those dues run?

A. At that time they were 35 cents a week.

Q. How much in assessments do you pay?

Mr. Langsdale: I submit that this is not material to any of the issues in this case, and certainly it is not proper recross-examination. Nothing of that kind was gone into in this woman's testimony on direct.

Mr. Hogsett: Mr. Langsdale was the gentleman who suggested it.

Trial Examiner Batten: How is it relevant, what her dues were?

Mr. Hogsett: I think there is this relevancy: If they are \$18.20 a year, the dues, and in addition to that they pay assessments, that would mean that an employee might be influenced to join the Donnelly Garment Workers' [fol. 6675] Union, whose dues were, I think, \$2.00 a year—in other words, that would be a factor that is pertinent in—

Trial Examiner Batten: Then, it would be necessary to try out all of the issues of what they get for their money.

Mr. Hogsett: Sure. That's fair enough.

Trial Examiner Batten: Well, I am not going to try out that issue, Mr. Hogsett.

[fol. 6676] By Mr. Tyler:

Q. Mrs. Stevens, after April 27, 1937, were you endeavoring to gather evidence which might be used against the Donnelly Garment Workers' Union for Miss Palmer or for an International representative?

A. No, that wasn't my purpose.

Q. You never made any effort to note any facts they might need and turn the facts over to them? A. No.

Q. Did you make efforts to get members for the International at the Donnelly plant after April 27?

A. I might have.

Q. Will you say whether you did or didn't?

A. Yes, I did.

Mr. Tyler: Did you get any?

Mr. Langsdale: I thought we would come to that—and what their names were and what their telephone numbers were.

I object to that as immaterial and not proving any issue in the case, and not proper cross-examination.

Trial Examiner Batten: I don't think it is relevant to [fol. 6677.] any issue here. However, I will permit her to answer that question.

Trial Examiner Batten: Did you get any?

A. Yes.

[fol. 6678] Mr. Tyler: Did the company or any representative of the company ever ask you if you were a member of the I. L. G. W. U.? A. No.

[fol. 6679] Q. Do you know of any people down there who were asked whether they were members of the International? A. I don't remember definitely.

Q. As I recall your answer to a question of Mr. Hogsett's, you said that in your opinion they wouldn't need busses even if there was violence down at the Donnelly plant. Did you say that? A. Yes.

Q. Is it your position that the International was entitled to use violence in order to organize the plant?

A. No.

Q. What did you mean, then, that they didn't need busses if there was violence?

Mr. Langsdale: I object to that as argumentative.

Trial Examiner Batten: She may tell us why.

A. I think I stated awhile ago, I see no difference in getting off of a bus or getting off of a streetcar.

By Mr. Tyler:

Q. You mean, then, the violence would be the same in either case? A. Yes.

[fol. 6680] Q. In that case, if busses had been used, the violence would have gone on to the Donnelly property and right up to the loading dock, wouldn't it?

A. If there were violence, yes.

Mr. Tyler: Did you feel that violence wasn't important, because you, as a member of the International, wouldn't suffer by it and, therefore, it didn't make any difference to you about violence?

[fol. 6681] A. If there were violence, of course it made a difference to me where it occurred.

By Mr. Tyler:

Q. Then, it would make a difference to you if there was violence in the Donnelly plant; is that correct?

A. Well, yes.

Q. To whom did you report names of members of the I. L. G. W. U. that you got or thought you could get in the plant?

A. Only the one person, Jane Palmer.

[fol. 6684] Trial Examiner Batten: The record will show that Board's exhibit No. 1-YYYYY is received, being a stipulation as to further testimony of Mrs. Reed.

(Thereupon the stipulation above referred to was marked "Board's Exhibit No. 1-YYYYY," for identification and received in evidence.)

[fol. 6690] OPAL CHANEY, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

[fol. 6699] Trial Examiner Batten: Well, the question, Miss Witness, is this: Mrs. Dorsey testified that the power was turned off for the purpose of the girls attending the meeting of March 18, being the meeting at which Mrs. Reed talked. Now, is that correct, or is it not correct?

A. She did not turn the power off during working hours.

[fol. 6700] Q. Mrs. Dorsey testified, Mrs. Chaney, that she told the operators that they would be paid for the time spent at this meeting of March 18. What are the facts about that?

Mr. Langsdale: I object to that as not proper surrebutal. They all testified that the meeting was held after working hours; therefore, there would be no such statement made. And also testified they were not paid for attendance at that meeting.

Trial Examiner Batten: I am inclined to agree with Mr. Langsdale, Mr. Ingraham, for this reason: If the basis upon which you are proceeding is that the meeting was held after, then the issue to be determined is whether or not the meeting was held during working hours or after working hours.

Mr. Langsdale: It was never contended that any employee was paid for a meeting that started after working hours.

Mr. Ingraham: Mr. Examiner, we are rebutting the testimony of Etta Dorsey that she advised these employees that they would be paid for the time spent at the meeting. Of course we did not answer that in our previous testimony, because we didn't know of it.

Trial Examiner Batten: Of course, that is true, but your contention was that the meeting was after working hours.

Mr. Ingraham: That is correct.

Trial Examiner Batten: And the principal issue to be determined, Mr. Ingraham, is whether the meeting was

[fol. 6701] held during working hours or after working hours.

Mr. Ingraham: Our contention is that all of these meetings were held after working hours.

Trial Examiner Batten: Yes.

Mr. Ingraham: But when the Board puts on a witness that testifies to the effect that she had instructions to tell the employees or the operators in her section that they would be paid for time spent at meetings, I think we clearly have a right to rebut that.

Mr. Reed: Let me make this suggestion: The other side did not rest content with saying this meeting was held during working hours. They proceed to buttress that and give the reasons for their answer by saying, "Not only was it not held after working hours, but this occurred: I turned off the power myself—I did it."

And then they go a step farther and say, "I told the girls they would be paid."

Now, it is perfectly plain that that evidence which they gave there, not only as to the time of the meetings, but these circumstances which they add, is new evidence, and a refusal of it would be grievous error.

Trial Examiner Batten: Now, whether or not it is grievous error is an entirely different thing. I am inclined to agree with you, Senator, on the matter of whether she told the girls they would be paid. Now, of course, that [fol. 6702] brings up the whole question of, where are we at with respect to this hearing?

Now, you may answer this if you want to, Mr. Ingraham, and if you don't want to you don't need to: Am I to assume you are going to have all of the girls in section 518 here and testify about these specific matters?

Mr. Ingraham: I believe we are going to have a large number of them.

Trial Examiner Batten: Well, I want to tell you now that you are not, so don't plan on it. I would say, not to exceed three witnesses on those matters, out of that section.

Mr. Langsdale: Now, let me suggest to the Examiner that if the trier of the fact, either the Examiner or the Board, finds that this meeting was held out of working hours, then ipso facto, you will find that Etta Dorsey's testimony that she turned off the power and told the girls they would be paid for the meeting goes out the window. Certainly, if the meeting was held after working hours, then Etta Dorsey was wrong when she said they would be paid.

Trial Examiner Batten: We will proceed on the basis I have indicated.

Mr. Ingraham: Will you read the question, please?

[fol. 6703] (Thereupon the last question was read by the reporter, as follows:

"Mrs. Dorsey testified, Mrs. Chaney, that she told the operators that they would be paid for the time spent at this meeting of March 18. What are the facts about that?")

A. She did not tell us we would be paid, and we were not paid.

Mr. Ingraham: Mrs. Chaney, there has been testimony here that Etta Dorsey told the girls that they would be paid for the time spent at the meeting of April 27, at which the Donnelly Garment Workers' Union was formed. What are the facts about that?

Mr. Langsdale: That is objected to for all of the reasons stated by the other objection—not proper surrebuttal.

Trial Examiner Batten: She may answer.

A. She did not tell us we would be paid, and we were not paid for that meeting.

Mr. Ingraham: There has been testimony given by Etta Dorsey that she told the girls they would be paid for four or five other meetings that were held—meetings of the Donnelly Garment Workers' Union. What were the facts about that?

[fol. 6704] A. We were not paid at any time for any of our union meetings and she did not tell us we would be paid.

By Mr. Ingraham:

Q. There has been testimony given that the girls returned to work in that section after attending meetings. What are the facts about that?

Trial Examiner Batten: Now, Mr. Ingraham, I do not believe that is proper surrebuttal, because there was testimony by some witnesses concerning that and the Board put on some concerning it. Now, I don't believe that is proper questioning at this stage of the proceedings.

By Mr. Ingraham:

Q. There has been testimony given that if an operator did not intend to come to work she would notify her instructor. What are the facts about that?

Mr. Langsdale: I object to that as not proper surrebuttal.

Trial Examiner Batten: Sustained.

By Mr. Ingraham:

Q. There has been testimony given that after Mr. Baty took charge of the factory in 1935, and up until July 15, 1939, instructors had the authority to transfer girls from one section to another. What is the fact about that?

Mr. Langsdale: Objected to as not proper surrebuttal. Mr. Baty, in 1939, ran the whole gamut with reference to [fol. 6705] that particular issue.

Trial Examiner Batten. Objection sustained.

By Mr. Ingraham:

Q. I hand you Board's exhibit No. 38 and ask you if you have seen the supplemental pay and transfer books. Have you ever seen any of those?

A. Yes.

Q. Now, at the bottom, "Approved by," what would the instructor approve as to that slip?

Mr. Langsdale: How is that proper surrebuttal?

Trial Examiner Batten: You may answer.

A. That is merely to state that you were in the section that day.

By Mr. Ingraham:

Q. To verify the time from, to some other time?

A. The time you worked in that section, yes.

Q. When an operator was to be transferred to another section, who did it?

A. Ella Mae Hyde.

Mr. Ingraham: Respondent offers to prove by this witness that if she were permitted to answer the question to the effect that, Did girls return to work after attending any of the meetings referred to? she would answer in the negative.

[fol. 6706] Respondent further offers to prove by this witness—

Mr. Langsdale: Just a moment. I want to make an objection to that offer, for all of the reasons offered to the question.

Trial Examiner Batten: Proceed.

Respondent further offers to prove by this witness that if she were permitted to answer the question as to whom the girls would notify if they were not coming to work, she would answer, "The employment office," and not "the instructor."

Mr. Langsdale: That is objected to in the offer for all of the reasons offered to the question.

Trial Examiner Batten: Any others?

Mr. Ingraham: No, that's all.

Trial Examiner Batten: The offers are rejected.

Cross-Examination.

By Mr. Tyler:

Q. Mrs. Chaney, did you ever know of any instructor directing the girls in her section to go with her, the instructor, to any union meeting?

Mr. Langsdale: I object to that as not proper surrebuttal.

Trial Examiner Batten: Sustained.

By Mr. Tyler:

Q. Did you hear Etta Dorsey give any instructions or [fol. 6707] information about the holding of union meetings to the girls in her section?

Mr. Langsdale: Objected to as not proper surrebuttal, and repetition.

Trial Examiner Batten: Sustained.

By Mr. Tyler:

Q. Did you ever see any group of girls being herded together to a meeting of the union by any instructor?

Mr. Langsdale: Objected to as not proper surrebuttal. Respondent has so characterized it.

Trial Examiner Batten: Sustained.

By Mr. Tyler:

Q. You joined the Donnelly Garment Workers' Union of your own free will?

Mr. Langsdale: Objected to as not proper surrebuttal.

Trial Examiner Batten: Sustained.

By Mr. Tyler:

Q. Who turned off the power at the end of the day, regardless of whether the day was a short one or a long one, in the section?

A. The instructors.

[fol. 6708] By Mr. Tyler:

Q. Were you ever a member of the executive committee of the Donnelly Garment Workers' Union, Mrs. Chaney?

A. No.

Q. Did you ever know of the Donnelly Garment Company or the Donnelly Garment Sales Company paying any member of the union for work which that member did for the union?

A. I did not.

Q. Do you know whether the employees of the Donnelly Garment Company obtained any improved conditions by the contract which the union made with the company in May 1937?

Mr. Langsdale: I object to that as not proper surrebutta'

Trial Examiner Batten: Sustained.

Mr. Tyler: I offer to prove that this witness, if allowed to answer the question as to whether she ever saw any group of girls taken to union meetings by the instructor, would answer that she did not.

Mr. Langsdale: That offer is objected to for the reasons [fol. 6709] offered against the question.

Trial Examiner Batten: Will it be agreeable to you, Mr. Tyler, to consider that the offer is one offer as to all of these questions, so that Mr. Langsdale doesn't have to interrupt, and I don't have to rule on each one separately?

Mr. Tyler: That is agreeable.

And I offer to prove that this witness, if asked the question whether there was any evidence of employees being herded to the union meetings, would answer No.

I offer to prove by this witness that if she were allowed to testify as to whether she knew of benefits received by the employees as a result of the contract of the Donnelly Garment Workers' Union with the company of May 27, 1937, would state that she did know of definite benefits received by reason of that contract.

Mr. Langsdale: The offers are objected to for the reasons given against the questions.

Trial Examiner Batten: The offer is rejected.

[fol. 6716] By Miss Weyand:

Q. Did you ever work, on a transfer slip, in a section other than your regular section—the transfer slip I have reference to—

Mr. Hogsett (Interrupting): Objected to on the same ground, as not proper cross-examination in surrebuttal.

Trial Examiner Batten: You may answer.

[fol. 6717] A. Yes, I have.

By Miss Weyand:

Q. What section number would appear on your check stubs on those occasions?

A. The section I really belonged in.

Q. And not the section you worked in?

A. Not the one I worked in extra, no.

[fol. 6718] By Miss Weyand:

Q. How do you happen to remember you were working in section 518 at the time of the meeting of March 18, at which Mrs. Reed spoke?

A. Well, we were working in that section when the company began giving us our old age benefit stubs.

[fol. 6719] (Thereupon the last answer was read by the reporter.)

By Miss Weyand:

Q. Do you remember when the company began giving you your old age stubs?

A. Sometime along the first of the year, I believe.

[fol. 6731] Mr. Hogsett: On page 6675 of the record yesterday, while Mrs. Stevens was on the stand, I made a verbal offer of proof in respect to the amount of dues [fol. 6732] of the International —

I offer to prove by the witness May Stevens that the amount of regular dues of the International Ladies' Garment Workers' Union at the time of her membership was 35¢ a week, which, for 52 weeks a year would be \$18.20 a year, and that in addition to that there were two regular assessments, one of \$1 per year as a death benefit assess-
[fol. 6733] ment, and the second an assessment of \$1 a year as a fund in the Work Labor Movement as a whole. That is all.

Trial Examiner Batten: I will reject the offer, because my recollection is that I rejected your tentative offer.

[fol. 6734] ANNA REECE, called as a witness by and on behalf of respondent Donnelly Garment Company, being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Ingraham:

Q. State your name, please.

A. Anna Reece.

Q. Where do you live?

A. 816 Monroe, Kansas City.

Q. Where are you employed?

A. Donnelly Garment Company.

Q. Were you employed at the Donnelly Garment Company during the months of March and April 1937?

A. Yes, I was.

Q. Will you please state what section you were working in at that time?

A. 518.

[fol. 6735] By Mr. Ingraham:

Q. I will hand you respondent's exhibits Nos. 52-A to 52-G, inclusive, and ask you if you received those pay checks?

A. Yes, I did.

[fol. 6736] Q. Mrs. Reece, I notice in front of your name on these checks the number "518." What does that indicate, if you know? A. That is our section number.

Q. Did you actually work in section 518 during the months of March and April 1937? A. Yes, I did.

Q. Do you recall who your instructor was at that time?

A. Yes, sir, I do. It was Mrs. Dorsey.

Q. Do you recall a meeting of employees on March 18, at which Mrs. Reed spoke?

A. Yes, I remember that meeting.

Q. Mrs. Dorsey has testified that she advised the employees in her section that the company would pay them for the time spent at that meeting. What are the facts about that?

[fol. 6737] A. We were not paid for any meetings that we—

Q Mr. Ingraham: The question was, Did Mrs. Dorsey tell—

Trial Examiner Batten: Oh, yes. Did Mrs. Dorsey tell you you would be paid?

A. She did not.

[fol. 6738] By Mr. Ingraham:

Q. Were you actually paid for the time spent at this meeting on March 18—paid by the company?

A. We were not.

Q. Do you recall a meeting of April 27, at which the Donnelly Garment Workers' Union was organized?

A. Yes, I remember that meeting.

Q. Mrs. Dorsey has testified that she advised the employees that they would be paid for the time spent at that meeting. Did Mrs. Dorsey so advise the employees?

A. She did not.

By Mr. Ingraham:

Q. Were you paid for any time spent at that meeting?

A. We were not.

Q. Mrs. Dorsey testified that she advised employees that they would be paid for time spent at several union meetings. Do you recall Mrs. Dorsey's ever informing you or any other employee that you would be paid for time spent at Donnelly Garment Workers' Union meetings? A. No.

Q. Were you ever paid for any time spent at any Donnelly Garment Workers' Union meetings?

A. We were not.

[fol. 6739] Mr. Ingraham: There has been testimony given that Edith Dean, Oina Lee Cooper, and Ethel Riegel

worked in section 518 during the months of March and April 1937. Do you recall whether or not they worked in that section at that time?

A. They did not.

By Mr. Ingraham:

Q. Do you recall during the months of March or April that you had any other instructor than Etta Dorsey?

A. We did not.

Q. Do you recall at any time during the time mentioned whether or not Etta Dorsey was transferred to some other section? A. She was not.

By Mr. Ingraham:

Q. I want to refer back to your pay checks, respondent's exhibits Nos. 52-A to 52-G, inclusive. Do you recall ever receiving a pay check with a section number on it which was not the actual section in which you were working at the time?

A. I don't remember ever getting one that didn't have my own section number on it.

Q. Do you recall whether or not Etta Dorsey ever turned the power off in section 518 for the purpose of sending the girls to a union meeting?

A. Not to my knowledge.

Q. Do you recall Etta Dorsey's ever turning the power off for the purpose of sending you to the meeting of March 18 or the meeting of April 27?

A. She did not.

Q. Will you state whether or not Etta Dorsey, to your knowledge, ever transferred girls from section 518 to any other section? A. No, she didn't.

[fol. 6741] Mr. Ingraham: Who does transfer girls from one section to another?

A. When we get a transfer we go to the employment office, to Mrs. Hyde.

By Mr. Ingraham:

Q. There has been testimony given that if an operator did not intend to come to work, the operator would notify her instructor. What are the facts about that?

A. Well, when I am absent I call the employment office.

Q. Did you ever receive any instructions by anyone to notify your instructor if you were not coming to work?

A. No, I did not.

Q. Did you ever attend a meeting of the Donnelly Garment Workers' Union and then return to work?

A. No, sir.

Q. Did you return to work after the meeting of March 18? A. No, sir.

Q. Did you return to work after the meeting of April 27? A. No, we didn't.

Q. State whether or not you ever heard of any employee being paid for attending the March 18 meeting.

A. I never heard of anybody being paid for that.

[fol. 6742] Q. Or the April 27 meeting? A. No.

Q. Or any union meeting? A. No.

Cross-Examination

By Mr. Tyler:

Q. Mrs. Reece, did you ever hear any instructor direct the girls or the workers in her section to attend union meetings in a group? A. No, I did not.

Trial Examiner Batten: I think I ruled on that question with the prior witness. I do not consider it proper.

Mr. Tyler: Did you ever see any instructor in the Donnelly plant gather the girls in her section together and take them to any union meeting? A. No.

Trial Examiner Batten: I make the same ruling with respect to that question, Mr. Tyler.

[fol. 6743] Mr. Tyler: What was the custom in the Donnelly factory as to whether the employees went to union meetings with anybody they pleased or not?

Trial Examiner Batten: The same ruling I made to the other two questions, Mr. Tyler.

Mr. Tyler: Did you ever hear of any employee at the Donnelly Company being paid by the company for any work that employee did for the union or any time that employee spent for the union? A. No, they were not.

[fol. 6744] Mr. Tyler: Have you ever been on the executive committee of the Donnelly Garment Workers' Union, Mrs. Reece?

A. No.

Mr. Tyler: That is all.

I offer to prove by this witness that if she were allowed to answer the questions which the Examiner has sustained objections to, she would testify that she never heard any instructor direct the girls in her section to attend any union meeting in a group; that she never saw any instructor gather the girls together and take them to a union meeting; and that the custom at the Donnelly plant was that employees would attend union meetings with whom-ever they pleased, without obstruction or pressure or limitation.

Trial Examiner Batten: The offer is rejected.

By Miss Weyand:

Q. When did you start to work at the Donnelly Garment Company? A. 1928.

Q. What kind of work were you doing in March and April of 1937? A. Shirring.

Q: What instructors did you work under during the years of 1936, 1937, and 1938? A. Mrs. Dorsey.

Q. All of the way through? A. Yes.

Q. No other instructor? A. No.

[fol. 6746] AGNES HUTCHINSON, a witness called by and on behalf of respondent Donnelly Garment Company, being first duly sworn, was examined and testified as follows:

Direct Examination -

By Mr. Ingraham:

Q. State your name, please.

A. Agnes Hutchinson.

By Mr. Ingraham:

Q. Where do you live, Mrs. Hutchinson?

A. 3321 Wyandotte.

Q. Where are you employed?

A. Donnelly Garment Company.

Q. Have you worked there a number of years?

A. Yes.

Q. Were you employed by the Donnelly Garment Company during the months of March and April 1937?

A. Yes, I was.

[fol. 6747] Q. Do you recall what section you were working in at that time?

A. Section 518.

Q. I will hand you respondent's exhibits Nos. 53-A through 53-G, inclusive, and ask you if those are pay checks that you received during the months of March and April while working at the Donnelly Garment Company.

A. Yes, they were.

Q. Now, I call your attention to the number in front of your name, 518, and ask you what that number signifies.

A. That states the section that I was in.

Q. Did you ever receive, to your knowledge, a pay check that had a section number on it which wasn't the section which you were actually working in at the time?

A. No.

Mr. Ingraham: I offer in evidence respondent's exhibits Nos. 53-A through 53-G, inclusive.

Trial Examiner Batten: No objection? They will be received.

(Thereupon the checks above referred to, previously marked "Respondent's Exhibits Nos. 53-A to 53-G, inclusive, Witness Hutchinson," for identification, were received in evidence.)

[fol. 6748] By Mr. Ingraham:

Q. During the months of March, April, and May, do you recall who your instructor was in that section—1937, I am referring to?

A. Etta Dorsey.

Q. Do you recall whether or not you had any other instructors during that time besides Etta Dorsey?

A. We did not.

Q. Etta Dorsey has testified that on March 18 she informed the girls in her section that they would be paid for the time spent at the meeting held later in the day. Do you recall Etta Dorsey's making such a statement as that?

A. No, I don't.

Q. Do you recall a meeting on March 18 at which Mrs. Reed spoke?

A. Yes, I remember it.

Q. Were you paid for the time spent at that meeting?

A. I was not.

Q. Did you attend the meeting?

A. Yes, I did.

Q. Do you recall a meeting of employees held on April 27, 1937, at which time the Donnelly Garment Workers' Union was organized?

A. Yes.

Q. Did you attend that meeting?

A. Yes, I did.

[fol. 6749] Q. Do you recall Etta Dorsey's making a statement to the operators in her section that they would be paid for the time spent at that meeting?

A. No, I don't.

Q. Were you paid for the time spent at that meeting?

A. We were not.

Q. Did you hear of any employees being paid for the time spent at either of those two meetings I have just referred to?

A. No, I didn't.

Q. Did you ever hear Etta Dorsey say that employees would be paid for the time spent at union meetings?

A. No, I did not.

Q. Did you ever hear of employees being paid for the time spent at the Donnelly Garment Workers' Union meetings?

A. No.

Q. Were you ever paid for any time spent at the Donnelly Garment Workers' Union meetings?

A. No, sir.

Q. If you did not intend to come to work, would you notify your instructor?

A. No, sir.

Q. Whom would you notify?

A. The employment department.

Q. Did you attend the meeting of March 18 that I referred to and then return to work?

[fol. 6750] A. No, sir.

Q. Did you attend the meeting of April 27 and then return to work?

A. No, sir.

Q. Did you attend any union meeting and return to work?

A. No, sir.

Q. Did you attend union meetings?

A. Yes, sir.

[fol. 6751] By Mr. Ingraham:

Q. Now, Etta Dorsey testified that operators had told her that they were not free to express themselves at meetings with instructors present. Did you ever hear any operator make any such statement as that?

A. No, I did not.

By Mr. Ingraham:

Q. Do you recall whether Edith Dean, during March, April, or May, worked in section 518?

A. No, she did not.

Q. Did Oma Lee Cooper, during that time, work in section 518?

A. No, she did not.

By Mr. Ingraham:

Q. Did Ethel Riegel work in 518 during that time?

A. She did not.

Cross-Examination

By Mr. Tyler:

Q. Mrs. Hutchinson, did you ever hear your instructor [foi. 6752] or any other instructor in the plant direct the girls in her section to go to union meetings?

A. No, I did not.

Q. Did you ever hear your instructor or any instructor in the plant tell the girls in the section that they should attend a union meeting together as a group?

Miss Weyand: I object to that as not proper surrebuttal.

Trial Examiner Batten: Well, of course, I assume, Mr. Tyler, you are going to ask those three questions?

Mr. Tyler: That's right.

Trial Examiner Batten: I thought I would wait until you had asked your three questions, so as not to encumber the record.

You may proceed.

Miss Weyand: And let her answer those questions?

Trial Examiner Batten: Yes.

By Mr. Tyler:

Q. Did you ever see any instructor in the plant gather the girls in her section together and take them to any union meeting?

A. No, I didn't.

Q. What was the custom in the Donnelly plant during the spring of 1937 and from the time the union was formed

on, as to whether employees went to union meetings with anyone they wanted to without any interference or repression or direction from anyone at all?

[fol. 6753] A. We would go with whoever we wished to, or by ourselves.

Trial Examiner Batten: Now, I assume that those are the three questions?

Mr. Tyler: That's right.

Trial Examiner Batten: That you have asked the other two witnesses. And I permitted the witnesses to answer to avoid the necessity of you making an offer of proof; and on the basis of my ruling on the prior two witnesses, I'll now strike the testimony of these three questions.

Mr. Tyler: I think it will be proper for me to make an offer of proof as to this witness, then.

Trial Examiner Batten: Well, is that necessary? That is the reason I had the witness answer, so you could avoid making an offer. In other words, you have asked the questions, the witness has answered them, and I have stricken her answers.

Mr. Tyler: Very well. I'll except to the Examiner's ruling. I think that will preserve the record.

[fol. 6754] By Mr. Tyler:

Q. Did you ever hear of the company paying any employee of the Donnelly Company for any work—for any time that the employees spent in the union affairs, or on union meetings, or union work?

A. No, I did not.

[fol. 6759] Mr. Ingraham: Well, I offer respondent's exhibits 52-A through G inclusive in evidence.

Trial Examiner Batten: Well, if there is no objection, they will be received.

[fol. 6761] IRIS LITTEN, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Ingraham:

Q. Will you please state your name?

A. Iris Litten.

Q. Where do you live?

A. 71 South 19th, Kansas City, Kansas.

Q. Where are you employed?

A. At present at Lake City Ordnance Plant.

Q. Were you employed by the Donnelly Garment Company in 1937?

A. Yes, I was.

Q. When did you leave the Donnelly Garment Company?

A. This last April, I believe the 10th, 1942.

[fol. 6762] Mr. Ingraham: In the months of March, April and May, 1937, do you recall what section you worked in at the Donnelly Garment Company?

A. Yes; I was in section 413.

Mr. Ingraham: Mr. Examiner, I intended to state before I put this witness on the stand that I understood you to say that you limited respondent to three witnesses in connection with the matters that Etta Dorsey testified about.

Trial Examiner Batten: Well, is that the way you understand it?

Mr. Ingraham: I understood you to say that very positively.

Trial Examiner Batten: Well, I think you are correct.

Mr. Langsdale: Well, I understood the limitation would be with reference to all matters inquired about this morning in connection with Etta Dorsey's testimony.

Trial Examiner Batten: My understanding of what I intended to do was limit you to three witnesses from that

section with respect to the matters that you asked the witnesses about. Now, is there any difference between that and your understanding?

Mr. Ingraham: No, that is what I understood you to say. Of course, we will prepare an offer of proof.

Trial Examiner Batten: If you have an offer, you make it right now, Mr. Ingraham.

[fol. 6763] Mr. Ingraham: Well, I haven't the—I have other witnesses here in connection with matters that relate to section 518.

Trial Examiner Batten: Well, I want an offer of proof; I don't want to wait for it until the witnesses are gone and the hearing is over. I want to say now any offers of proof must be here before the hearing closes. I am not going to accept any offers of proof when this hearing closes, on any matter, so if you have an offer, now, with respect to the people in that section, section 518; I want you to make it now.

Mr. Ingraham: Respondent offers to prove by Ruth Strandt, Ida Barton, Leone Sams, Beatrice Face, Goldie Sprague, Nina Giffardi, Grace Pardun, Anne Belan, Lulu Gordon, Ruth Chaney Miller, Ida Mauk, Estel Rothgeb, Ora Dull, Lela Stevens, Hazel Higgins, Violet Hawkins, Anne Elizabeth Stone, and each of them, that if permitted to testify they would testify that they were employed during the months of March, April, and May, 1937, by the Donnelly Garment Company, and during said time worked in section 518; that during all of said time, Etta Dorsey was their instructor and they had no other instructor during said time except Etta Dorsey; that Etta Dorsey [fol. 6764] did not inform them or state to them that they would be paid by the Donnelly Garment Company for the time spent at the meeting of March 18, 1937, where Mrs. Reed spoke; and they were not, in fact, paid for the time spent at said meeting; that Etta Dorsey did not inform them or state to them that they would be paid for the time spent at the meeting of April 27, 1937, and they, in fact, were not paid for the time spent at that meeting;

that Etta Dorsey did not state to them that they would be paid for time spent at union meetings; and they, in fact were not paid for time spent at any union meetings; that they did not know of any employee being paid for time spent at any said union meetings, or the meeting of March 18, April 27, or any other meeting; that they did not attend any meetings during said time and return to work.

Mr. Langsdale: Union meetings, you mean?

Mr. Ingraham: Well, any of the aforesaid meetings, and return to work; that in the event they did not intend to come to work, they would notify the employment office, and would not notify their instructor; that the employment office would transfer operators in their section and it was not done by the instructor.

Trial Examiner Batten: Mr. Ingraham, to clear up that matter that Mr. Langsdale spoke to you about, union meetings, don't you think it would be well to indicate you are referring to the March 18, April 27 meetings, and all union meetings?

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[fol. 6765] Mr. Ingraham: Let me put it this way: that meetings referred to were any meetings of the employees, except fashion shows.

Mr. Langsdale: And not excepting Loyalty League meetings?

Mr. Ingraham: Well, there is a dispute about that—no, not excepting.

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[fol. 6766] Mr. Ingraham: I am through;—well, wait just a second. I want to add to the offer of proof that each of said stated persons will further testify that they [fol. 6767] never received a pay check with the section number on it that was not the correct section number in which said person worked, and that each of said persons' pay checks had on it section number 518 during the months of March, April, and May of 1937.

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Trial Examiner Batten: Well, my understanding is that the offer of proof is in line with the testimony of the three witnesses, and taking into consideration the objections offered by the various attorneys representing the parties, and upon that basis I reject the offer.

[fol. 6773] ANNA REECE, a witness recalled by and on behalf of respondent Donnelly Garment Company, having been previously duly sworn, was further examined and testified as follows:

Redirect Examination

By Mr. Ingraham:

Q. I will hand you, Mrs. Reece, respondent's exhibit No. 52-H and ask you if that was a pay check that you received from the Donnelly Garment Company.

A. Yes, sir.

Mr. Ingraham: I offer in evidence respondent's exhibit No. 52-H.

[fol. 6774] Recross-Examination

By Mr. Langsdale:

[fol. 6777] Q. It is your belief, then, that the section number is put on the check, even though the section be temporary; is that correct?

A. No, I didn't say that. I said the section number is on your pay check if you have worked in that section and drawn your pay out of that section, but I said I didn't think I had ever been in a section for a pay period other than my own section.

[fol. 6778] Redirect Examination

By Mr. Ingraham:

Q. Mrs. Reece, I believe you stated this morning in answer to a question by Miss Weyand that you had worked

in Etta Dorsey's section during the years 1936, 1937, and 1938. Now, during that time did you work on the seventh floor?

A. A part of that time, yes, we worked on the seventh floor, but not all of that time.

Q. Do you recall whether or not during all of that time you were working in section 518?

A. Not on the seventh floor all of that time. I was in 518.

Q. What other floors did you work on that you recall?

A. We were moved from the ninth floor to the seventh floor, where I went to work for Mrs. Dorsey, and then we went from the seventh floor to the sixth floor, where Mrs. Dorsey was still instructor—however, it was a different section, 524. Then later, perhaps a year, I don't remember the date—we went back on the eighth floor, into section 515-A.

Q. Now, during the months of March and April, 1937, [fol. 6779] what floor were you working on?

A. We were on seventh.

Q. And what was the section? A. 518.

Q. Who was your instructor? A. Mrs. Dorsey.

[fol. 6780] Trial Examiner Batten: Respondent's exhibit No. 52-H will be received.

IRIS LITTEN, the witness previously on the stand, resumed the stand and was examined and testified further as follows:

Direct Examination (Resumed)

By Mr. Graham:

Q. Mrs. Litten, during the months of March, April, [fol. 6781] and May, 1937, what section were you working in? A. I was in 413.

Q. I will hand you respondent's exhibit No. 54-A to 54-I, inclusive, and ask you if you received these pay checks from the Donnelly Garment Company?

A. Yes, I did.

Q. When were you paid, if you recall, Mrs. Litten?

A. On Thursday of each week.

Q. And what was that pay for?

A. For the week preceding.

Q. Now, I notice in front of your name there is the number 413. What does that indicate?

A. That is the section that I worked in.

Q. Were you in that section during the periods that you received these pay checks? A. Yes.

Q. Do you know who your instructor was in that section? A. At what time?

Q. At that time, or at the time of March, April, and May, 1937? A. Yes. Lola Skeens.

Q. Do you recall a meeting of employees on March 18 at which Mrs. Reed spoke?

A. Yes.

Q. There has been testimony that the instructor or [fol. 6782] someone advised the girls that they were to be paid for the time spent at that meeting. Did you receive any such information from Lola Skeens or anyone else?

A. No one told me.

Q. Were you paid for the time spent at the meeting of March 18? A. No, I wasn't.

Q. Did you attend a meeting on April 27, 1937, at which time the Donnelly Garment Workers' Union was organized? A. Yes.

Q. Did you understand from Lola Skeens or anyone else that you were to be paid for the time spent at that meeting? A. No.

Q. Did you ever hear anyone say that employees were to be paid for the time spent at that meeting?

Mr. Ingraham: I will restrict it to Lola Skeens.

[fol. 6783] Trial Examiner Batten: Did she ever say anything to you? A. She never said a word to me.

Mr. Ingraham: Mr. Examiner, in view of Mr. Langsdale's objection, the way he worded it, I want to ask the question that I just asked without placing any limitation on it.

Mr. Ingraham: Did you ever hear any one say that the employees were to be paid for the time spent at the meeting of March 18 or the meeting of April 27?

[fol. 6784] A. No.

By Mr. Ingraham:

Q. Did ~~Lola~~ Skeens tell the employees in your section that employees were to be paid for the time spent at union meetings? A. No.

Q. Were you paid for the time spent at the March 18 meeting, the April 27 meeting, or any union meeting?

A. No, I wasn't.

Q. Do you recall ever being paid for any time you spent at any Loyalty League meetings? A. No.

Q: Did you ever—

[fol. 6785] Trial Examiner Batten: Of course, there is no testimony here by any instructor that Lola Skeens—is there—that they were paid for attendance at Loyalty League meetings?

Mr. Hogsett: I think some of them went pretty far. They had the company just paying for everything.

Mr. Langsdale: Mr. Examiner, the Board contends that the meeting of April 27 was called a Loyalty League meeting and that the meeting of May 25 was a joint Donnelly Garment Workers' Union meeting and a Loyalty League meeting.

Trial Examiner Batten: Of course, I am not concerned about your contentions.

[fol. 6786] Trial Examiner Batten: Well, it was my idea this morning that the witness could testify about specific testimony of specific witnesses, and that was my intent this morning in limiting it. I didn't intend to go into the cover-all questions, because I think we have had enough of those in the last hearing and I think we have had enough of them in this hearing.

Now, if there is any specific testimony about Loyalty League meetings, all right. If there isn't, then it is my intention that we are not going to go into it.

Now, whether that covers Mr. Ingraham's situation, I don't know.

Mr. Langsdale: Well, just for the purpose of the record,—There was specific testimony from May Stevens that the minutes, the Elsa Greenhaw minutes, of May 25 were correct, which means that that was a Loyalty League meeting, and the testimony was that the employees were paid for attending that meeting. So that does make the testimony [fol. 6787] specific that employees were paid for attending a Loyalty League meeting on the 25th of May, 1937.

Trial Examiner Batten: We will proceed.

Mr. Ingraham: Did you ever attend a Loyalty League meeting that immediately followed a meeting of the Donnelly Garment Workers' Union?

[fol. 6788] A. I never did.

By Mr. Ingraham:

Q. Were you ever paid for attending a Loyalty League [fol. 6789] meeting? A. No.

Q. Did Lola Skeens ever shut off the power for the purpose of your attending a meeting during working hours? A. No.

Cross-Examination

By Mr. Tyler:

Q. Did you ever hear any instructor direct the girls in her section to attend a meeting of the Donnelly Garment Workers' Union?

A. No.

Q. Did you ever see any instructor gather the girls together in her section and take them down to a Donnelly Garment Workers' Union meeting?

A. We never did go in a group.

By Mr. Tyler:

Q. What was the custom from the beginning of the Donnelly Garment Workers' Union's existence down to July 15, 1939, as to whether the employees attended meetings with anybody they wanted to, entirely free from any interference or dominance about whom they went with?

[fol. 6790] A. The custom was, we would dress as we wanted to, or we wouldn't, and we went when we wanted to, or with whom we wanted to.

Q. Sometimes you would go after work, wearing your aprons?

A. I have.

Trial Examiner Batten: Just a moment. The last question— The three preceding questions are similar to those you have asked the preceding witnesses and I do not consider them proper, so I will strike the answers and it may stand as an offer of proof; that is, your three questions prior to the last question.

Mr. Tyler: What is your ruling as to the last one?

Trial Examiner Batten: That is in the same category. I didn't include it in my original statement because it is a new question which you have not asked the prior witnesses, but it may be stricken and considered as an offer of proof.

By Mr. Tyler:

Q. Did you ever hear of the Donnelly Garment Company or the Donnelly Garment Sales Company paying any employee for time the employee spent on meetings of the Donnelly Garment Workers' Union or work for the Donnelly Garment Workers' Union?

[fol. 6791] A. No.

Trial Examiner Batten: Your last question may be considered in the same status. I will strike the answer and

it may be considered as an offer of proof. In other words, it now stands in the record as an offer of proof.

[fol. 6794]

Cross-Examination.

By Mr. Langsdale:

Q. How long have you been working out at Lake City?

A. Since April 13, I believe—on Monday after I quit Donnelly's.

Q. Did you quit Donnelly's or take a leave of absence?

A. I quit.

Q. Do you still belong to the Donnelly Garment Workers' Union?

A. No.

[fol. 6795] Q. Now, I think you stated that Lola Skeens did not tell you there was to be a meeting on March 18. That is the meeting at which Mrs. Reed made a speech. Is that true?

A. Yes. She didn't tell me. I didn't hear her tell anyone.

[fol. 6807] Trial Examiner Batten: Mr. Ingraham, do you have any further questions?

Mr. Ingraham: No, that's all.

I offer in evidence respondent's exhibits 54-A to —

Trial Examiner Batten: (Interrupting) To I.

Mr. Ingraham: (Continuing) — to I inclusive.

Trial Examiner Batten: If no objections, they will be received.

LORA FRIES, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Ingraham:

Q. Please state your name?

A. Lora Fries.

Q. Where do you live, Miss Fries?

[fol. 6808] A. 2405 Sterling.

Q. Are you employed?

A. No.

Q. Were you employed in 1937 by the Donnelly Garment Company?

A. I was.

By Mr. Ingraham:

Q. When did you leave the employment of the Donnelly Garment Company?

A. In September of 1937.

Q. Were you steadily employed during the months of March, April, and May, 1937, by the Donnelly Garment Company?

A. I was.

Q. Do you recall what section you worked in?

A. 413.

Q. Do you recall who your instructor was?

A. Lola Skeens.

[fol. 6809] By Mr. Ingraham:

Q. I will hand you respondent's exhibits 55-A to H inclusive, and ask you if those six checks — or eight checks — rather were received by you while working at the Donnelly Garment Company.

A. Yes, I received those checks.

Q. Now, I call your attention to the number, 413, in front of your name. What does that represent?

A. The section I was working in.

Mr. Ingraham: I offer in evidence Respondent's exhibits 55-A to H inclusive.

Trial Examiner Batten: If no objections, they will be received.

By Mr. Ingraham:

Q. State whether or not Lola Skeens ever told you or any other operators in your presence, that you would be paid for attending a meeting that was held on March 18, 1937, at which Mrs. Reed spoke.

A. She didn't tell me.

Q. Did you hear her tell anybody else?

A. No.

Q. Do you recall a meeting of employees on April 27, at which the Donnelly Garment Workers' Union was organized?

A. Yes.

[fol. 6810] Q. State whether or not Lola Skeens told you or any other employee in your presence that you were to be paid for the time spent attending that meeting.

A. No.

Q. State whether or not Lola Skeens ever told you that you were to be paid for the time spent at union meetings.

A. No.

Q. State whether or not Lola Skeens ever told you that you were to be paid for the time spent at Loyalty League meetings.

A. No.

Q. Lola Skeens testified that she told the girls in her section of union meetings by going down one side of the section and telling six girls at a time of the meetings. State whether or not she ever told you that a meeting was to be held at all.

A. No, Lola never told me that a meeting was to be held.

Q. Did Lola tell you that the meeting of March 18 was to be held?

A. She did not.

Q. Did she tell you that the meeting of April 27 was to be held?

A. No.

Q. Did she tell you that any union meeting was to be held?

A. No, not that I remember.

[fol. 6811] Q. Were you ever paid for the time spent at any of the meetings I have referred to?

A. No, I was not paid.

Q. Did Lola Skeens ever shut off the power for the purpose of sending you to any meeting?

A. No.

Cross Examination.

By Mr. Tyler:

Q. Did you ever have any instructor in the Donnelly plant direct girls in her section to attend any Donnelly Garment Workers' Union meeting?

A. No.

Q. Did you ever see any instructor in the Donnelly plant gather the girls in her section together in a group and take them to a Donnelly Garment Workers' Union meeting?

A. No.

Q. What was the custom of the Donnelly plant, beginning with the organization of the Donnelly Garment Workers' Union in April, 1937, down as long as you worked there, as to whether the employees went to those meetings, [fol. 6812] with whom they chose, or whether they wanted to or not, without any direction, orders, or compulsion from anybody representing the company?

A. We went with whomever we pleased.

Q. Did you ever hear of the Donnelly Company or the Donnelly Garment Sales Company paying any member of the Donnelly Garment Workers' Union for any time they spent at the Donnelly Garment Workers' Union meetings, or any work they did for the Donnelly Garment Workers' Union?

A. No.

Trial Examiner Batten: Mr. Tyler, those first three questions come within my previous ruling. I don't think they are proper, and I'll strike them, and they may stand as an offer of proof; that is, the three questions preceding the one you just asked and the witness just answered.

By Mr. Tyler:

Q. Did you ever go to a Donnelly Garment Workers' Union meeting wearing your apron, before you changed into your street clothes?

A. As I remember it, I always was dressed to leave the plant.

Trial Examiner Batten: Of course, this question, too, Mr. Tyler, is in the same classification with the first three [fol. 6813] questions you asked the witness, and that is the reason I didn't interrupt you. Now, you inject one question in between the two, and I'll strike this answer, and it may stand as an offer of proof.

By Mr. Tyler:

Q. Did you see other girls who went to Donnelly Garment Workers' Union meetings after working hours, still wearing their aprons?

A. I did.

Trial Examiner Batten: I don't think it is. It may be stricken and may stand as an offer of proof.

[fol. 6814] By Mr. Tyler:

Q. You have stated that you knew of girls going to the Donnelly Garment Workers' Union meetings, after working hours, just wearing their aprons. I want to know if you saw that frequently, and with a substantial number of girls.

A. Well, there would be a few that wore their aprons because they weren't in any hurry to go home.

Trial Examiner Batten: Now, that question, of course, following the other one, I consider it improper and will strike the answer, and it may stand as an offer of proof, for the various reasons given with respect to the other questions.

[fol. 6819] Redirect Examination.

By Mr. Ingraham:

Q. Were those two meetings after working hours?

A. They were after working hours.

[fol. 6820] Recross Examination.

Mr. Tyler: Didn't Lola Skeens shut the power off at the end of the working day right along every day

A. Yes.

LILLIE REYNOLDS, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Ingraham:

Q. Will you please state your name?

A. Lillie Reynolds.

Q. Where do you work, Miss Reynolds?

A. I am not employed; I am home right now.

Q. Did you formerly work for the Donnelly Garment Company? A. I did.

Q. When did you work for the Donnelly Garment Company?

A. Well, I began working in 1929, I believe.

[fol. 6821] Q. And when did you leave the company?

A. This year, the first of March.

Q. Were you working for the Donnelly Garment Company during the months of March, April, and May, 1937?

A. I was.

Q. What section were you working in? A. 413.

By Mr. Ingraham:

Q. I hand you Respondent's exhibits 56-A to I inclusive, and ask you if these are pay checks that you received from the Donnelly Garment Company during the months of March, April, and May, 1937? A. They are.

Q. I will ask you what the number in front of your name indicates?

A. The 413 is the section.

Q. That is the section? A. Yes.

Q. Now, who was your instructor in 413 during the months of March, April, and May, 1937?

A. Lola Skeens.

Q. Did Lola Skeens turn off the power at any time for [fol. 6822] the purpose of sending you to any meetings?

A. No.

Q. Did she turn the power off when the working day was ended? A. Yes.

Q. Did you attend a meeting on March 18 at which Mrs. Reed spoke? A. I did.

Q. Did Lola Skeens tell you that that meeting was going to be held? A. No.

Q. Did you see Lola Skeens go up the north side of the section telling the girls to go to the meeting?

A. No, I didn't.

Q. Did you see the thread girl go up the other side of the section, telling the girls to go to the meeting?

A. No.

Q. Did Lola Skeens tell you that you were to be paid for the time spent at that meeting? A. No.

Q. Were you paid for the time spent at that meeting?

A. No.

Q. Did you attend a meeting on April 27, 1937, at which time the Donnelly Garment Workers' Union was formed?

A. Yes, I did.

Q. Did Lola Skeens tell you that that meeting was going [fol. 6823] to be held? A. No.

Q. Did she go up the north side of the section telling the girls that the meeting was going to be held?

A. No, sir.

Q. Did the thread girl go up the other side of the section, telling the girls that the meeting was going to be held? A. No, sir.

Q. Did Lola Skeens tell you you were to be paid for the time spent at that meeting? A. No.

Q. Were you paid for the time spent at that meeting?

A. No, sir.

Q. Did Lola Skeens tell you that any union meeting was going to be held? A. No.

Q. Did Lola Skeens tell you that you were to be paid for any time spent at any union meeting? A. No, sir.

Q. Did Lola Skeens tell you that you were to be paid for the time spent at any Loyalty League meeting?

A. No, sir.

Q. Were any of these meetings that I have referred to held during working hours? A. They were not.

[fol. 6824] Mr. Ingraham: Were you in fact paid for the time spent at any of the meetings I have referred to?

A. No.

Cross-Examination

By Mr. Tyler:

Q. Mrs. Reynolds, did you ever hear any instructor at the Donnelly plant direct the girls in her section to attend any meeting of the Donnelly Garment Workers' Union?

A. No, sir.

Q. Did you ever see any instructor in the Donnelly plant gather the girls together and take them in a group to a meeting of the Donnelly Garment Workers' Union?

A. No, sir.

Q. What was the custom from April 1937 up until July 15, 1939, as to whether the employees went to these meetings with anyone they chose to, or went or stayed away as they chose to?

A. Well, we went when we wanted to, and we went with whom we wanted to.

[fol. 6825] By Mr. Tyler:

Q. Did you ever hear of the Donnelly Garment Company or the Donnelly Garment Sales Company paying any member of the Donnelly Garment Workers' Union for time that member spent at meetings of the union, or doing work for the union? A. No, sir.

Q. Did you ever wear your apron to a meeting of the Donnelly Garment Workers' Union held after working hours? A. Yes, sir, I did.

Q. Why did you do that?

A. Because I wore my apron home several times; most of the time I went in a car and I was in a hurry to get home, and I just left it on.

Q. Was that a common occurrence among the girls or not?

A. Yes, I think quite a few of them went home that way with them on.

[fol. 6826] Trial Examiner Batten: Now, all those questions except the one, were you ever paid for attending any union meetings? I think come within my prior rulings.

Mr. Tyler: That 'is, they are stricken, but may stand as an offer of proof?

Trial Examiner Batten: They may stand as an offer of proof, that's right.

[fol. 6827] Cross-Examination

By Mr. Langsdale:

Q. You stated that Lola Skeens didn't tell you of the meeting of March 18. How did you learn of that meeting?

A. Just through the employees, the girls.

[fol. 6830] Q. Now, let's go to the meeting of the 27th of April. You said Lola Skeens didn't tell you of that meeting. Who did tell you of it?

A. The same way, the employees.

[fol. 6833] Mr. Ingraham: I offer in evidence Respondent's exhibits 56-A to I inclusive.

Trial Examiner Batten: If there is no objection, they will be received.

[fol. 6834] Mr. Ingraham: Mr. Examiner, does the same ruling apply to section 413 as to section 518?

Trial Examiner Batten: Exactly.

Mr. Ingraham: Then respondent makes an offer of proof that if Marie Richardson, Hazel Hardman, Emilea Raines, Grace Short Kunther, Eva Liberman, Edna Tattershall, Lois Kesinger, Millie Ihle, Katherine Sutulovick, Ruth Putnam, Emma Hansen, Edith Alexander, Lillie Reynolds, Bertha Taylor, Lucille Wilkey, Anna Spahr, Pearl Hall, Nellie Stites, Ruth McBride, Lorene Johnson, Beulah Perkins, Mildred Brooks Ballard, Opal Richardson, Dorothy Dietz Sharp, Gladys Rudd, were permitted to testify, they would testify as follows:

That they were employed at the Donnelly Garment Company during the months of March, April, and May, 1937; that their instructor was Lola Skeens during said period; that each attended the meeting of March 18, 1937; that

Lola Skeens did not notify them or any of them that said meeting was to be held; that Lola Skeens did not go up the north side of the section notifying the girls of the meeting; that Lola Skeens did not inform the girls that they were to be paid for the time spent at that meeting; that they were not paid for the time spent at that meeting; that each [fol. 6835] of said persons attended the meeting of April 27, at which time the Donnelly Garment Workers' Union was formed; that Lola Skeens did not notify any of them of said meeting; that Lola Skeens did not go up the north side of the section, telling the girls of the meeting, and that the thread girl did not go up the south side of the section, telling the girls of the meeting; that Lola Skeens did not tell the girls that they were to be paid for the time spent at said meeting; and that none of the persons named received any pay for the time spent at said meeting; that they attended union meetings, and were never notified by Lola Skeens that said meetings were to be held, and were not informed by Lola Skeens that they would be paid for the time spent at said meetings, or any of them; and they were not, in fact, paid for any time spent at any union meeting; that Lola Skeens did not notify them of any Loyalty League meetings, and they were never paid for any time spent at any Loyalty League meetings; that all the meetings above referred to were held after working hours.

[fol. 6837] Trial Examiner Batten: I am perfectly willing the offer of proof be just as all-inclusive as the last three witnesses.

Mr. Ingraham. That Lola Skeens did not turn the power off for the purpose of sending the employees in section 413 [fol. 6838] to any of the meetings referred to.

Trial Examiner Batten: Well, are you finished?

Mr. Ingraham: Yes.

Trial Examiner Batten: Well, the offer of proof will be rejected on the same grounds as previously stated, for the same reasons, and I will allow the same objections, if there were any.

[fol. 6839] GEORGE J. MCCARTHY, a witness called by and on behalf of respondent Donnelly Garment Company, being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Hogsett:

Q. Please state your name?

A. George J. McCarthy.

Q. And your occupation, Mr. McCarthy?

A. I am an employee of the Donnelly Garment Sales Company.

Q. How long so employed?

A. Since July 15, 1941.

Q. In what capacity?

A. As an assistant to the comptroller.

Q. What business does the comptroller have there, what scope?

A. As a general rule, his scope is comparable to that of any comptroller. It would take quite a long while to detail all of his duties.

Q. In a general way, he handles the figures and records for the company?

A. Yes.

Q. Are you an accountant by profession?

A. Yes.

Q. Have you had training in that field?

A. Yes.

[fol. 6840] Q. What training have you had?

A. I was engaged for quite a number of years with a public accounting firm in Kansas City as senior accountant and tax consultant.

Q. With what firm?

A. Edward J. Dillon & Company.

Q. That is a nationally known firm, isn't it?

A. Yes.

Q. Now, Mr. McCarthy, have you at our request made a comparative statement of the earnings per hour for piecework operators for the first six months of 1937 as compared with the same months in 1938? Just answer Yes or No. Have you done that?

A. Yes.

Q. Have you at our request made that study and analysis as to each and every section in the plant for those months?

A. We have.

Q. Have you at our suggestion taken in each instance the first five names on your records for a given section where those same names also appeared in the record for that section for the following year, so that you would have a comparative statement in each section of the first five names of persons who work in both sections?

A. We did.

Q. Now, in your opinion as an expert accountant, is that [fol. 6841] a perfectly fair method of sampling the results in all the sections for both of those periods?

A. Yes, I would say it would be.

Q. I hand you sheets which have been identified by the reporter as respondent's exhibits Nos. 57-A to 57-D, inclusive, and ask if that is the statement which you have prepared, at our request, upon the basis detailed?

A. Yes, it is.

(Thereupon the sheets above referred to were marked "Respondent's Exhibits Nos. 57-A to 57-D, inclusive, Witness McCarthy," for identification.)

Q. Are the facts and figures recorded in these sheets true and correct?

A. They are.

Q. Based upon records kept in the usual and due course of business?

A. That is right.

Mr. Hogsett: I offer respondent's exhibits 57-A to 57-D, inclusive.

[fol. 6847] (Thereupon the sheets above referred to, previously marked "Respondent's Exhibit No. 57-A to 57-D, inclusive, Witness McCarthy," for identification, were received in evidence.)

By Mr. Hogsett:

Q. Mr. Langsdale's objection—which, of course, isn't evidence, but I want to deal with it briefly—is that you should have taken in this study the time immediately be-

[fol. 6848] fore and the time immediately after this contract, which became effective, I think, July 1, 1937. Now, bearing on that, is the business of the Donnelly Garment Company a seasonal business, with a peak period at one time and a low period at another?

A. Yes, I think very definitely it is.

Q. Very definitely it is, because it is dealing in the field of women's styles and those are seasonal things, aren't they?

A. They are.

Q. In your opinion, as an expert, is it not only proper but eminently fair—or, I will say, entirely fair, to take the same season in each year, if you are going to make a comparative analysis?

A. That is the only way a just comparison could be made.

Q. Your low period is in the summer, isn't it, July, August, and September—or June and July?

A. That is right.

Q. And comparing the same period, the six months immediately before the contract became effective with the same period of months in the following year, in your opinion is that proper and fair?

A. That is.

[fol. 6853] By Mr. Hogsett:

Q. You recall, Mr. McCarthy, last evening, that you identified and there was received in evidence exhibits 57-A to D inclusive?

A. That's right.

Q. I want to briefly cover with you what this exhibit shows. Taking the first section, shown in the first column appears the section number, the word "operators, and then five names; is that right?

A. That's right.

Q. Then opposite those names respectively appears a subheading covering information for the period January through June 1937: is that right?

A. That is also right.

Q. That in turn is broken down into a column showing the hours they worked in that period?

A. That's right.

Q. The amount they received in that period?

[fol. 6854] A. That's correct.

Q. And the compilation of the average per-hour which they respectively received during that period, is that right?

A. That's right.

Q. Then comes another column headed "January through June 1938," is that right?

A. That's right.

Q. Which in turn is broken down into the column showing the hours which they respectively worked in that period, the amount of money which they respectively received in that period, and the calculation of the average per hour which they respectively received during that period?

A. That's right.

Q. Now, the rest of these sections are set up in the same manner, are they not?

A. They are all similar.

Q. And you have covered in this exhibit all the sections in the plant?

A. That's right.

Q. Now, let's see how those —

Trial Examiner Batten: (Interrupting) Mr. Hogsett, you say all the sections; you mean not only sewing sections, but all sections, is that what you mean?

Mr. Hogsett: Well, I mean everything they designated as a section in which piece work operators work. I use the [fol. 6855] word in the same sense, and I believe the witness does, in which we have so frequently used it in this hearing, as a division in which piece work operators work.

By Mr. Hogsett:

Q. Let's see how these average earnings per hour compare for this first group that we have been looking at. I will read, skipping the names, and omitting the fractions of a cent, the amounts for the period January through June. You may check whether I read it accurately.

The first person received 46¢ plus.

A. That's right.

Q. In the period from January through June, 1938, is that right?

A. No, that is January through June, 1937.

Q. 1937; it is my slip. That same person received 55¢ plus average per hour in the corresponding period of 1938, is that right? A. That's right.

Q. Now, in like manner I'll just read the 1937 figures, and the 1938 figures, and you check whether I am reading it right.

The next person, 60¢ plus and 66¢ plus.

The next person, 50¢ plus and 63¢ plus.

The next person, 45¢ plus and 56¢ plus.

The next person 47¢ plus and 59¢ plus; is that right?

A. That is correct.

Q. Now, that is the way this whole thing is set up, isn't [fol. 6856] it, in that same manner?

A. That is correct.

Q. I'll not go through the details, I'll just let the exhibit speak for itself. A. That's right.

[fol. 6858] Cross-Examination
By Mr. Langsdale:

[fol. 6861] Q. What is your position with the Donnelly Company? A. Assistant Comptroller.

Q. And who is the comptroller?

A. Who is the comptroller?

Q. Yes. A. Mr. John B. Bachofer.

Q. And you are one of his assistants?

A. I am his only assistant.

Q. I see. You have picked five girls from each section?

A. That's right.

Q. Did you pick the five or did someone pick them for you?

A. If I prefer to state an answer, I picked them myself.

Q. Well, do you know? I am asking you.

A. I think it is already in the record as to the manner in which the five girls were picked.

Q. I am asking you whether you did or not.

Mr. Hogsett: Tell him again how they were chosen.

[fol. 6862] By Mr. Langsdale:

Q. Well, how did you happen to pick Ludie James, for instance?

A. Well, the first five girls in every section were chosen as a representative of the employees.

Q. Well, you chose the first five in each section, did you?

A. The first five.

Q. Now, who told you to do that?

A. I don't know that I had any instructions. In my own best judgment, those girls would provide, probably, a comparable basis.

Q. Well, do you know—did Mr. Baty tell you to pick the first five girls in each section?

A. Mr. Baty didn't have anything to do with it.

Q. Did anyone tell you to take the first five girls in each section? A. No.

Q. Do you know how you happened to do that?

A. It was my own best judgment, if we were going to provide—or rather compile a comparable statement, showing comparable figures for two different periods, we had to form some basis of judgment—or rather some standard of comparative people, and in my own best judgment we thought the first five in each section, a comparison of their salaries, would be a comparable statement.

Q. Well, now, did you do that on your own judgment, or [fol. 6863] was it suggested to you by anybody, that you take the first five?

A. No, I did it on my own judgment.

Q. Why did you take January through June, 1938? Who told you to do that?

A. No one told me to do it. January through June, 1938, of course, we compared—it is already in the record that the Donnelly Garment Company business is a seasonal business, and for the first six months of 1937 an attempt was made to find an equal number of months during a comparable period, so far as the activities of the Donnelly Garment Company were concerned, in a period of work; and the next immediate period following were the first six months in 1938.

[fol. 6865] Redirect Examination

By Mr. Hogsett:

Q. Is it a fact that Mr. Bachofer is ill, laid up?

A. That's right.

Q. He has had an operation within the last month, has he not? A. Yes.

Q. Is he on duty or has he been since that time?

A. No.

Q. This statement simply represents your judgment of a fair sampling of the actual earnings of the operators for the two comparable periods? A. That's right.

[fol. 6866] OPAL CHANEY, a witness heretofore called by and on behalf of the respondent, having been previously sworn, was examined and testified further as follows:

Redirect Examination

By Mr. Ingraham:

Q. Mrs. Chaney, I hand you respondent's exhibit 51-G; which is a check dated May 6, 1937, and ask you if you received that check from the Donnelly Garment Company.

A. Yes.

Mr. Ingraham: I offer in evidence respondent's exhibit 51-G.

Trial Examiner Batten: If there is no objection, it will be received.

[fol. 6869] By Mr. Ingraham:

Q. Mrs. Chaney, were March and April and May busy months at the factory, when there was a great deal of production? A. April and May is always busy.

AGNES HUTCHINSON, a witness heretofore called by and on behalf of the respondent, having been previously sworn, was examined and testified further as follows:

Redirect Examination

By Mr. Ingraham:

Q. I will hand you respondent's exhibit 53-H, which is a pay check of the Donnelly Garment Company and ask [fol. 6879] you if you received that pay check.

A. Yes, that is my signature.

Mr. Ingraham: Respondent offers in evidence respondent's exhibit 53-H.

Trial Examiner Batten: If no objection, it will be received.

[fol. 6871] By Mr. Ingraham:

Q. Were January, February, March, April, May, and June busy seasons at the Donnelly plant?

A. They usually are, then they have their spring lines.

Q. And that is the height of the production season for the plant? A. Yes, sir.

(Witness excused.)

MARY COPOWYCZ, a witness called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Ingraham:

Q. Please state your name. A. Mary Copowycz.

Q. Where do you live, Mrs. Copowycz?

A. 2719 Gillham Road.

Q. Are you employed by the Donnelly Garment Company? A. I am.

Q. What is your position?

[fol. 6872] A. I am an instructor.

Q. Were you an instructor during the years 1937, 1938, and 1939? A. I was.

Q. Mrs. Copowycz, did you know a girl named Bessie Weilert? A. I did.

Q. During the year 1939, did she work in the same section you did? A. She did.

Q. Bessie Weilert has testified, Mrs. Copowycz, that you and Rose Todd framed her. State whether or not that is a fact.

Trial Examiner Batten: I thought I struck that testimony out.

[fol. 6873] Mr. Langsdale: I thought he struck it. That is my recollection. I thought he should and I think he did.

Miss Weyand: Yes, I am certain you struck that whole incident, because I had it on direct.

Mr. Langsdale: Well, may the record show, if you didn't [fol. 6874] strike it, you will strike it now? I want the record clear. I thought you did, and my recollection at the time was that I personally thought it should be stricken, and I thought you did.

Trial Examiner Batten: Well, of course, if it hasn't been it may be, but there isn't any question about it.

Mr. Ingraham: Mrs. Copowycz, did Mr. Baty, Mrs. Wherry, or anyone else ever tell you that the girls that worked in the section in which you worked would be paid for attending the meeting of March 18, at which Mrs. Reed spoke?

[fol. 6875] A. No, they did not.

By Mr. Ingraham:

Q. Did Mr. Baty or Mrs. Wherry or anyone else advise you the operators were to be paid for the meeting of April 27? A. No.

[fol. 6876] Q. Did Mr. Baty or Mrs. Wherry advise you that the operators were to be paid for any union meeting?

A. Well, no, because they were always after working hours.

Q. Did Mr. Baty or Mrs. Wherry ever advise you that the employees were to be paid for time spent at Loyalty League meetings? A. No, sir.

Q. Did you ever see any allowance on any cards showing that employees were paid for time spent at the meetings I have mentioned, or any of them? A. No, I didn't.

Q. Did you ever turn the power off in your section for the purpose of sending girls to any meetings?

A. No, I didn't.

Mr. Langsdale: Now, was that any meeting?

Mr. Ingraham: Or any meetings I have mentioned.

Trial Examiner Batten: Mr. Ingraham, I don't know what your plans are, but I thought I indicated pretty clearly yesterday that if any of those instructors, as a result of testimony, were involved on those matters, they might testify as to them. Now, you are asking this witness a general question: the generalities of the situation we have long since passed. Now, I don't know what your plans are, but do you plan to call all the instructors?

Mr. Ingraham: Well, I planned to call a number of them.

[fol. 6877] Trial Examiner Batten: How many?

Mr. Ingraham: Well, in view of what you said about other witnesses, I was going to call at least three.

Trial Examiner Batten: Now, Mr. Ingraham, if you planned to call them all, you call them, every one of them, if that is your plan.

So, we will proceed.

Mr. Ingraham: Well, do you feel that that isn't rebuttal?

Trial Examiner Batten: Well, I clearly don't think it is, Mr. Ingraham.

[fol. 6879] Cross-Examination

Mr. Tyler: Mrs. Copowycz, did you ever direct the girls in your section to attend any meeting of the Donnelly Garment Workers' Union in a group?

Miss Weyand: I object to the question as not proper surrebuttal.

Trial Examiner Batten: Well, I would suggest then you ask the questions as you did of the other witnesses, and if I decide that it is not proper, it may stand as an offer of proof, other than going through it, and then making an offer of proof.

[fol. 6880]: By Mr. Tyler:

Q. Did you ever know of any other instructor in the plant directing the girls in her section to go to a Donnelly Garment Workers' Union meeting as a group?

A. No, I didn't.

Q. What was the custom in the Donnelly plant, from the date that the union was formed, down to July 15, 1939, as to whether the employees went to the Donnelly Garment Workers' Union meetings with anyone they pleased, and whether they wanted to or not, without any pressure or direction on them, or whether they were directed or forced to go in a certain group?

A. They could do just as they pleased.

By Mr. Tyler:

Q. Did you ever hear of the Donnelly Garment Company or the Donnelly Garment Sales Company paying any member of the Donnelly Garment Workers' Union for any time that that employee spent attending union meetings, [fol. 6881] or doing union work? A. No, I didn't.

Q. Did you ever know of Bessie Weilert being paid for any time spent attending meetings of the executive committee of the Donnelly Garment Workers' Union?

A. No, I didn't.

Q. Did she ever make any such a report to you?

A. No, I don't think she did.

By Mr. Tyler:

Q. Well, do you have any memory of her making any such report as that to you? A. No, I don't.

Q. Did she ever hand you any written request or memorandum asking that she be allowed payment for tending to any union business? A. No, she didn't.

Q. Did you ever wear your apron to a meeting of the Donnelly Garment Workers' Union, when the meeting was held after working hours?

A. I don't remember, but I could have.

Q. Do you know whether that was commonly done or not in the plant? A. It has been done.

Mr. Tyler: Did the employees get any additional rights through that contract, do you know?

A. Why, I think they did.

[fol. 6883]

Cross-Examination

By Miss Weyand:

[fol. 6884] Q. Do you remember any meetings of the employees of any kind, from 1932 on, which were held during working hours?

Mr. Stottle: That is objected to as going back to the period Your Honor has ruled on.

Trial Examiner Batten: What is it, Mr. Stottle?

Mr. Stottle: That goes back to the period you ruled on, [fol. 6885] 1932.

Mr. Tyler: The intervenor objects; that is not proper cross-examination on surrebuttal, going back to 1932.

Trial Examiner Batten: You may proceed.

A. Well, I know that we have went to a style show, and that was during working hours.

By Miss Weyand:

Q. Do you know what arrangement was made to pay the girls for the time they spent at the style show?

A. I wouldn't know.

Q. Do you know in what years you had style shows that the girls attended during working hours?

A. No, I don't.

Q. Do you remember how often it occurred?

A. Not very often, no, but I don't remember how often.

Q. Do you remember any occasions on which Mrs. Reed spoke to the girls during working hours? A. No, I don't.

Q. Did she speak to groups of them during working hours?

A. No, I don't remember of it. I don't think so.
[fol. 6886] Q. What was that?

A. I don't think she ever spoke during working hours.

Q. Did she make speeches at the style shows?

A. Yes, she has.

Q. That was during working hours, wasn't it?

A. Yes, it was, although sometimes we have had style shows after working hours.

Q. Did Senator Reed ever make a speech down at the plant at a style show or other meetings?

A. I never saw Senator Reed in the Donnelly Garment Company.

[fol. 6891] By Miss Weyand:

Q. What section were you the instructor of, from April, 1937, to July 15, 1939?

A. In 1937, the first half of the year, I think I was in 522; the last half I was in 517; then I was transferred the last part of 1938 to 414, in which I have been ever since.

Q. And were employees in your section notified of meetings of the Donnelly Garment Workers' Union during that period?

A. Well, they have bulletins in the elevators and in the lobby of the building.

Q. Were i. d. m.'s ever brought to your section, notifying employees in your section of a meeting of the Donnelly Garment Workers' Union?

A. If they were I didn't know anything about it.

Q. How are i. d. m.'s brought to your section?

A. Well, that is such a common occurrence; they have i. d. m.'s for anything, if they have a birthday party, if they want to sell a house, or anything like that.

[fol. 6893] By Miss Weyand:

Q. Who brought the i. d. m.'s to your section regularly?

A. You mean pertaining to anything, or what exactly?

Q. Let's take first an i. d. m. which comes down from the office, notifying the girls of the vacation they would have, July 4 off; how would that i. d. m. come to your section?

A. Through a pick-up girl.

Q. What would happen when that i. d. m. arrived at your section? Who would she deliver it to, or where would the pick-up girl put it?

A. We have a basket up there for the girls to put the i. d. m.'s in.

Q. When an i. d. m. is put in the basket, which comes to your section by a pick-up girl, what happens to it next?

A. Well, either the thread girl or myself would take care of it.

Q. How would you take care of it?

A. Well, they are usually to us, and not to the section, and if they are pertaining to the section, why, we pass them through the section.

[fol. 6895] By Mr. Langsdale:

Q. The style shows that you have testified about were style shows given by the Donnelly Garment Company, were they not?

A. Yes, they were.

Q. And during working hours?

A. No, not always.

Q. Well, some of them?

A. Yes. I can recollect one or two.

Q. Given during working hours?

A. That's right.

Q. I believe you testified you didn't know whether the girls were paid or not for those times they lost from their work?

A. The office took care of that.

[fol. 6896] Mr. Lane: Mr. Examiner, in the cross-examination of Board's witness May Stevens the intervener examined her with reference to intervener's rejected exhibit No. 20, and especially with respect to page 6090 of the Circuit Court of Appeals record. I now have photostatic copies of that page of the record, which I offer in evidence.

Trial Examiner Batten: It will be received on the same basis as the other pages which were received that were

offered by the respondent in Intervener's exhibit No. 20. Now, you understand what I mean by that, Mr. Lane?

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[fol. 6897] LEE BATY, a witness recalled by and on behalf of respondent Donnelly Garment Company, having been previously duly sworn, was further examined and testified as follows:

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Direct Examination.

By Mr. Ingraham:

Q. Mr. Baty, did you ever tell Etta Dorsey that employees were to be paid for the time spent at the meeting of March 18?

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[fol. 6898] A. I did not.

By Mr. Ingraham:

Q. Did you ever give any instructions to Mrs. Wherry or anyone else to advise employees or instructors that employees were to be paid for attending the March 18 meeting?

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A. I did not.

By Mr. Ingraham:

Q. Were any employees paid for attending the meeting of March 18?

A. They were not, to my knowledge.

Q. Did you tell Lola Skeens that employees were to be paid for attending the March 18 meeting?

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A. I did not.

By Mr. Ingraham:

Q. Did you tell Etta Dorsey or Lola Skeens that employees were to be paid for attending the meeting of April 27?

A. I did not.

Q. Did you tell Mrs. Wherry or anyone else that employees were to be paid for attending the meeting of April 27?

[fol. 6899] A. I did not.

Q. Did you ever hear of Mrs. Wherry or anyone else advising instructors or employees that the employees were to be paid for attending the meeting of March 18 or April 27?

A. No, I did not.

Q. Did you advise Lola Skeens or Etta Dorsey that employees were to be paid for attending union meetings?

A. I did not.

Q. Did you advise Mrs. Wherry or anyone else that employees were to be paid for attending union meetings?

A. No.

Q. If orders were given to pay for the time spent by employees at the meetings I have referred to, who would give those orders.

A. I would give the orders, if it pertained to the production department.

Q. Lola Skeens and Etta Dorsey were in the production department?

A. They were.

Q. Did you ever give any orders that employees were to be paid for time spent at Loyalty League meetings?

A. I did not.

Q. Now, to your knowledge, were employees paid for any of the meetings that I have referred to?

A. They were not.

[fol. 6900] Q. Mr. Baty, after you became production manager do you recall going over the cards of the operators in Etta Dorsey's section with Etta Dorsey?

A. I went over them occasionally.

Q. Do you recall whether or not there were allowances on employees' cards in Etta Dorsey's section showing that they were paid for time spent at any of the meetings I referred to?

A. There were no allowances made for anything of that kind.

Q. Do you recall going over cards with Lola Skeens for the operators in her section at any time?

A. I did occasionally.

Q. Were there any allowances on those cards showing that employees in Lola Skeens' section were given allow-

ances for time spent at any of the meetings I have referred to?

A. There was not.

Cross-Examination.

By Mr. Tyler:

Q. Mr. Baty, did you ever direct instructors to take the [fol. 6901] girls in their sections to meetings of the Donnelly Garment Workers' Union in a body?

A. No.

Q. Did you ever know of that being done as a custom in the plant?

A. I never heard of any such thing.

Q. Do you know what the custom was in the Donnelly plant from the organization of the Donnelly Garment Workers' Union down to July 15, 1939, as to whether employees did as they pleased about whom they went to union meetings with, or whether they went at all or not, or whether there was some restraint or control over them in that matter?

A. I have no information about it. I don't know how they went. I knew they had meetings, and that's about all.

Q. Did you ever give instructions that any employee was to be paid for attending meetings of the executive committee of the Donnelly Garment Workers' Union?

A. I never gave any instructions that they would be paid by the company.

Q. Do you know of their being paid by the company?

A. They were not, to my knowledge.

[fol. 6904] By Mr. Langsdale:

Q. Did you ever know of any allowances on any of the cards you examined in Etta Dorsey's section for time lost at fashion shows?

A. I did.

Q. Or Loyalty League meetings?

A. No.

Q. How was that designated, the loss for fashion shows?

A. If there was time lost on account of the fashion show, or for any other reason, I put it on the card.

[fol. 6905] By Mr. Tyler:

Q. Mr. Baty, are style shows a part of the education of the employees of the company?

A. They are.

Trial Examiner Batten: I don't presume the company is being charged with paying them for the time they spent attending a style show; at least, I hope not.

[fol. 6907] FRED V. BROWN, a witness called by and on behalf of intervener Donnelly Garment Workers' Union, being first duly sworn, was examined and testified as follows:

Trial Examiner Batten: Did you testify in the other hearing, Mr. Brown?

The Witness: No, sir.

Direct Examination.

By Mr. Tyler:

Q. Will you state your name?

A. Fred V. Brown.

Q. Where do you live?

A. 6155 Kenwood.

Q. Where are you employed?

A. Donnelly Garment Company.

Q. How long have you been with the Donnelly Garment Company?

A. Twenty-three years.

Q. What position do you hold at the Donnelly Garment Company?

A. I am supervisor over the cutting department.

Q. How long have you been supervisor of the cutting department?

A. A year.

Q. Are you now a member of the Donnelly Garment Workers' Union?

A. No, sir.

Q. How long ago did you cease being a member of it?

[fol. 6908] Mr. Langsdale: I object to that as not proper surrebuttal. There is no issue in this case as to when he

ceased, unless it was during the period covered by this examination.

Trial Examiner Batten: Of course, having limited the hearing to July 15, 1939, how could it be material, assuming my ruling is correct, Mr. Tyler?

Mr. Tyler: Assuming your ruling is correct, that everything that has happened since July 15, 1939, is inadmissible, then of course this is inadmissible.

Trial Examiner Batten: I think I shall so rule, Mr. Tyler.

Mr. Tyler: An automatic exception is allowed, of course?

Trial Examiner Batten: Oh, yes.

By Mr. Tyler:

Q. Mr. Brown, you were one of the original members of the Donnelly Garment Workers' Union, were you not?

A. Yes, sir.

Q. And during the time you were a member of that union were you ever paid for attending meetings of the Donnelly Garment Workers' Union?

A. I was not.

Q. During the year 1937 were you a member of the executive committee of that union?

A. Yes, sir.

Q. Were you ever paid by the company for attending any meetings of the executive committee?

[fol. 6909] A. I was not.

Q. Did you ever attend any meetings of the Donnelly Garment Workers' Union held during working hours?

A. No, sir.

Q. You were treasurer of the Donnelly Garment Workers' Union at one time, were you not? A. Yes, sir.

Q. Did you ever have any knowledge of the Donnelly Garment Company or the Donnelly Garment Sales Company paying any member of the Donnelly Garment Workers' Union or into its treasury any sums for payment of employees for doing any work for the Donnelly Garment Workers' Union or attending any of its meetings?

A. I have no recollection of it.

Q. Do you know whether employees of the company—women employees of the company ever attended meetings of the Donnelly Garment Workers' Union held after working hours while still wearing their working aprons?

A. Oh, yes, they came to the meetings, some of them, with their aprons on.

Q. Did you ever know of any instance where an instructor gathered the employees together in her section and took them to a Donnelly Garment Workers' meeting as a group? A. No, I do not.

Q. What was the custom as to whether employees from [fol. 6910] April 27, 1937, until July 15, 1939, were free to attend Donnelly Garment Workers' Union meetings with anyone they chose or whether there was some pressure or control put on them as to whom they would go with or how they would go?

A. Well, they were free to go as they wanted to. There was no pressure, that I know of, put on anyone.

Trial Examiner Batten: Mr. Tyler, those last three questions—if you have finished with that series— Have you?

Mr. Tyler: I think so.

Trial Examiner Batten: Those last three questions I think were improper. They were not proper rebuttal.

I shall strike the answers and it may stand as an offer of proof.

Mr. Tyler: Very well.

Mr. Tyler: Did the Donnelly Garment Workers' Union pay any of its members who did work for that union?

[fol. 6911] A. Yes.

By Mr. Tyler:

Q. What ones?

A. Well, we paid taxi fares that some of them had paid out—

Trial Examiner Batten: Now, just a moment. I am not going into all of these accounts, Mr. Tyler. I think it was covered in the last hearing; if it wasn't, it should have been, so I am not going into all of these accounts.

[fol. 6913] By Mr. Tyler:

Q. Mr. Brown, will you answer the question as to what [fol. 6914] particular members of the Donnelly Garment Workers' Union, if any, were paid for work they did for the Donnelly Garment Workers' Union?

A. Well, I paid Hobart Atherton—I bought his gas bills—I bought a gas ticket for the running around that he did for the union. And I paid Raymond Smith for coming down from St. Joseph—driving down from St. Joseph.

Q. Were there any salaries paid?

A. Yes. I paid Rose Todd's salary, and I, myself, drew a salary.

Q. At that time were any other members of the executive committee paid anything for their services?

A. They were not.

Q. Do you know whether they have been since that time?

A. I understand they have.

Trial Examiner Batten: You mean, since July, 1939, or up to July, 1939?

By Mr. Tyler:

Q. I will say, after April 27, 1937, and up to July 15, 1939, do you know whether any other members of the executive committee were paid for their services by the union?

A. Well, no, I don't know for sure whether they have been or not.

Q. Do you recall a contract made by the Donnelly Garment Workers' Union with their employer in the spring [fol. 6915] of 1937, in a general way? A. Yes, sir.

Q. Do you know whether the employees obtained any benefits—additional rights under that contract that they didn't have before? A. Yes, they did.

[fol. 6918] JACK MCCONAUGHEY, a witness recalled by and on behalf of Intervener Donnelly Garment Workers' Union having been previously duly sworn, was further examined and testified as follows:

Direct Examination

By Mr. Tyler:

Q. Will you state your name, please?

A. Jack McConaughy.

Q. You are the same Jack McConaughy who testified in the hearing in 1939 in this matter, are you not?

A. Yes, sir.

Q. You were a charter member—meaning by that, one of the original members—of the Donnelly Garment Workers' Union, were you not? A. Yes, sir.

Q. Do you still belong to the Donnelly Garment Workers' Union? A. No, sir.

[fol. 6919] By Mr. Tyler:

Q. You attended meetings of the Donnelly Garment Workers' Union customarily, did you, from 1937, in the spring, until July 15, 1939; or thereabouts?

A. Yes, sir.

Q. Were you ever paid by the company for attending any of those meetings? A. I was not.

Q. You were a member of the executive committee of the Donnelly Garment Workers' Union at one time before 1939, were you not? A. Yes, sir.

Q. Were you ever paid by the company for attending any of those meetings? A. No, sir.

Q. When were those meetings customarily held?

A. Which—

Q. The executive committee meetings.

A. They were held at the noon hour or in the evenings, [fol. 6920] or sometimes after 5.

Q. If the meetings were of substantial length, when would those meetings customarily be held?

A. Usually at one of the committee member's house.

Q. Any other place except the committee members' houses? A. At the office of Mr. Tyler.

By Mr. Tyler:

Q. You were at one time treasurer of the Donnelly Garment Workers' Union, were you? A. Yes, sir.

[fol. 6921] Q. During that time did you ever receive for the union any sums of money from the Donnelly Garment

Company or the Donnelly Garment Sales Company to be paid to the union or to any members of the union from the company or the Sales Company? A. No, sir.

[fol. 6922]

Cross-Examination

By Miss Weyand:

[fol. 6923] Q. How long did you have off for lunch?

A. My job is of such a nature that I had to arrange my lunch hour—at that time I don't remember exactly how long I took.

Q. Do you know how long other time workers had off for lunch?

A. Well, in the normal periods, in the production department, 45 minutes; and in the office, an hour.

Q. Are you speaking of time workers or pieceworkers?

A. Time workers.

[fol. 6925] Q. Did you ever have any deductions from your pay check for time you spent attending to matters of the Donnelly Garment Workers' Union?

A. I didn't spend time with the Donnelly Garment Workers' Union during working hours.

[fol. 6930] MABEL RIGGS, a witness called by and on behalf of the Intervener, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Tyler:

Q. Will you state your name—is it Mrs. Riggs?

A. Mrs. Mabel Riggs.

Q. Where do you live, Mrs. Riggs?

A. I live at 3021 Campbell.

Q. Were you one of the original members of the Donnelly Garment Workers' Union?

A. Why, I am a member of the Donnelly Garment Workers' Union.

Trial Examiner Batten: Well, did you join it at the time it was organized?

A. Yes, I joined it at the time it was organized.

By Mr. Tyler:

Q. And you have been a member ever since?

A. I have.

Q. How long have you been employed at the Donnelly plant? A. A little more than 13 years.

Q. And that employment, has it been comparatively continuous? A. It has been continuous.

Q. And are you reasonably well acquainted with the customs of work that go on down there?

A. Well, I would say reasonably, yes.

[fol. 6931] Q. What kind of work have you done there?

A. My work has been in the designing room. I work with patterns.

Q. And have you done any other kind of work down there?

A. Well, our patterns involve a good many different kinds of work, and most of it has been with the patterns.

Q. Have you ever been an operator? A. I have not.

Q. Did you customarily attend meetings of the Donnelly Garment Workers' Union? A. I did.

Q. Did you attend any held during working hours?

A. No.

Q. Did you ever hear any instructor in the plant direct the group over which she was instructor to attend any union meeting in a group? A. No, I have not.

Q. What was the custom in the Donnelly Garment Company as to whether employees attended Donnelly Garment Workers' Union meetings with whom they pleased and as they pleased, or whether there was any pressure or compulsion from the company to require them to go in a group, or in any other manner.

[fol. 6932] A. Well, I can speak for just our own floor, and if we were enthusiastic and we wanted to go to the meetings, no one had to tell us or take us.

Mr. Tyler: Were you ever paid by the Donnelly Garment Company—

Trial Examiner Batten: (Interrupting) Just a moment: if you are going to that question, the two prior questions, I think, come within my prior ruling, and I will strike them and they may stand as an offer of proof.

By Mr. Tyler:

Q. Were you ever paid by the Donnelly Garment Company or the Donnelly Sales Company, for attending any Donnelly Garment Workers' Union meetings?

A. I attended those meetings on my own time and didn't expect pay.

Q. Well, were you ever paid? A. No.

[fol. 6933] By Mr. Tyler:

Q. You have been a member of the executive committee?

A. I was a member the second year.

Q. That would be 1938? A. Yes.

Q. Were you ever paid by the Donnelly Company or the Donnelly Sales Company for attending any meetings of the executive committee? A. No.

Q. When were those meetings generally held?

A. They were held during the noon hour, or immediately after our work, after 5 in the evening, and on occasions in the evening.

Q. Did you have any knowledge of the contract executed between the Donnelly Garment Workers' Union and the Donnelly Company on May 27, 1937, and amended or added to by a wage agreement on June 22, 1937?

A. I had no hand in forming that. Of course, I have read it and I have benefitted by it.

Mr. Tyler: Do you know of any benefits received by yourself or other employees from the execution of this contract?

[fol. 6934] Mr. Langsdale: I object to that as not proper surrebuttal.

Trial Examiner Batten: Well, of course, I think, Mr. Tyler, that comes within the same category, does it not, as the other questions?

Mr. Tyler: I wish to make the same offer of proof.

Mr. Langsdale: The same objection.

Mr. Tyler: As to that made to the answers of those other questions, and as was made in answer in the testimony of the witness Fred Brown.

Trial Examiner Batten: Well, the same offer and the same objections; I will make the same ruling.

Mr. Tyler: I don't believe I asked this question: Do you know whether women employees of the Donnelly Garment Company attended meetings of the Donnelly Garment Workers' Union held immediately after hours, still wearing their work aprons or not?

A. Yes, they ride to and from in their white aprons.

[fol. 6936] Mr. Tyler: Mrs. Riggs, is there any further explanation you want to make about that? If there is, go ahead and explain.

A. This is the explanation. I mean they would naturally go to work in their white aprons. I know some of the girls said, "I don't want to wear my dress, I want to wear my white apron, so why put them on?"

Mr. Tyler: Was the wearing of aprons to those meetings, held immediately after working hours, fairly common? A. I would say it was.

[fol. 6937] Cross-Examination
By Miss Weyand:

Q. How long did you have off for lunch?

A. We had one hour.

[fol. 6939] ALVIN REIFEL, a witness called by and on behalf of the intervener, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Tyler:

Q. Will you state your name, please?

A. Alvin Reifel.

Q. Where do you live, Mr. Reifel?

A. 4304 West 53rd, Mission, Kansas.

Q. Where are you employed?

A. At the Donnelly Company.

Q. How long have you been employed there?

A. 9 years.

Q. What work do you do there, now?

A. Cutter.

Q. What other work, if any, have you done during the 9 years down there, besides being a cutter?

A. Various things. I have spread, worked on maintenance crews, and helped to move various things.

Q. Were you a member of the Donnelly Garment Workers' Union when it was first formed?

A. Yes, I was.

Q. Have you remained a member ever since?

[fol. 6940] A. Yes.

Q. You were at one time before July 15, 1939, a member of one of the executive committees, were you not?

A. Yes, I was.

Q. Were you ever paid by the Donnelly Garment Company for attending any meetings of the Donnelly Garment Workers' Union? A. No, I was not.

Q. Were you ever paid by the Donnelly Garment Company for attending any meetings of the executive committee of the Donnelly Garment Workers' Union?

A. No, sir.

Q. When were the executive committee meetings customarily held?

A. During noon hour—you mean during the time or the place?

Q. During the time you were on the committee.

A. Do you mean the place or the time?

Q. The time.

A. During noon hours or after working hours.

Q. If the meeting was substantial in length, what was the custom as to whether it was held at noon or after working hours?

A. I didn't get the question.

Q. If the meeting was going to be long, what was the custom as to whether it was held at noon or after working hours? A. After working hours.

[fol. 6941] Q. Did you ever see, during the time of your employment at the plant, any instructor or any other person, gather together a group of persons and take them as a group to a meeting of the Donnelly Garment Workers' Union?

A. No, sir.

Mr. Tyler: What was the custom, since April 27, 1937, and down to the middle of July, 1939, as to whether employees in the Donnelly Garment plant attended meetings of the Donnelly Garment Workers' Union, with whom-ever they please, and as they pleased, or whether they were under pressure or direction from anyone as to how they should attend those meetings?

A. As they pleased, no pressure.

Trial Examiner Batten: Now, those last two questions, Mr. Tyler, I think come under the ruling that I have made, and I strike the answers, and they may stand as an offer of proof, the same as with the other witnesses.

[fol. 6943]

Cross Examination

By Mr. Hogsett:

Q. As I understood your testimony—I want to be certain about it—you did not attend any such meetings, either Donnelly Garment Workers' Union meetings or meetings of your committee, representing that union, during working hours; that's right, is it?

A. That's right.

Q. So, of course, there would be no deductions?

A. That's right.

[fol. 6946] ELIZABETH BARRETT, a witness called by and on behalf of intervener Donnelly Garment Workers' Union, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Tyler:

Q. Will you state your name, please?

A. Elizabeth Barrett.

[fol. 6947] Q. Is it Mrs. Barrett? A. Yes.

Q. Where do you live?

A. 819 West Seventy-seventh Street.

Q. Where are you employed?

A. Donnelly Garment Company.

Q. How long have you worked there?

A. Since 1930.

Q. Substantially continuously? A. Always.

Q. Have you been a member of the Donnelly Garment Workers' Union since it was formed? A. I have.

Q. And have you been a member of the executive committee at some time prior to July 15, 1939?

A. 1938. I was in 1939, too.

Q. You were on the committee in 1938? A. Yes.

Q. Were you ever paid by the Donnelly Garment Company or the Donnelly Garment Sales Company for any time spent at a Donnelly Garment Workers' Union meeting? A. I was not.

Q. Were you ever paid by the Donnelly Garment Company or the Donnelly Garment Sales Company for any time spent at a Donnelly Garment Workers' Union executive committee meeting?

[fol. 6948] A. No, I wasn't.

Q. What work do you do at the Donnelly plant?

A. I am a pieceworker. I work in the belt section.

By Mr. Tyler:

Q. Has that been true since the spring of 1937?

A. I have always worked in the belt section.

Q. Did you ever see any instructor in the Donnelly Company gather the girls together in her section and take them in a group to any meeting of the Donnelly Garment Workers' Union? A. I have not.

Q: What has been the custom at the plant as to whether the employees went to meetings of the Donnelly Garment Workers' Union with whom they pleased, and in such manner as they pleased, or whether there have been some instructions, orders, or pressure for them to go in certain groups?

A. We went as we pleased.

By Mr. Tyler:

Q: Did you ever wear your work apron to a meeting of the Donnelly Garment Workers' Union held after [fol. 6949] working hours? A. I have.

Q: Do you know whether that has or has not been a common custom at the Donnelly plant?

A. It is common.

Trial Examiner Batten: Now, the last three questions, Mr. Tyler, of course, are within the ruling which I have made, so that I will strike the answers and the answers may stand as an offer of proof.

Mr. Hogsett: Your Honor, that suggests to my mind this: Your Honor has from time to time rejected or refused to receive or stricken out certain evidence offered by the intervener, either through cross-examination of respondent's witnesses or through its own witnesses. The respondent, deeming each of those rulings adverse to its position, respectfully asks that respondent be allowed an exception to each such ruling.

Trial Examiner Batten: Of course, I don't need to allow you one. You are permitted one, an automatic exception.

[fol. 6950] Trial Examiner Batten: I will say, I grant you such ruling. Now, of course, I assume if any question comes up concerning any specific ruling, as to whether or not it is adverse, someone would have to settle it—I mean, if a difference of opinion arises.

[fol. 6951] Mr. Hogsett: I can't see that there would be any reasonable difference of opinion about this, for instance, as illustrative: Where you strike out, as you have evidence offered in response to three such questions as Mr. Tyler has asked each of his witnesses and asked each of our witnesses, that certainly is adverse.

Trial Examiner Batten: I don't think there is any question but what that is adverse, because I have, I would say, on a half a dozen occasions, asked the respondent and the intervener to cooperate to expedite the hearing. Therefore I could hardly say that it wasn't.

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[fol. 6960] Trial Examiner Batten: Mr. Tyler, might I ask: How many more witnesses do you intend to interrogate along the same line as these others?

Mr. Tyler: I expect to continue until I feel I have offered a fair cross-section of the witnesses to refute the testimony.

Trial Examiner Batten: Well, I think I should tell you now that, as far as these questions and this line of testimony is concerned, I don't think— You have some others here?

Mr. Tyler: Yes, I have other witnesses here.

Trial Examiner Batten: Were you contemplating more than you have here?

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Mr. Tyler: I intend to continue until I feel that a fair cross-section of the evidence available to meet new matter has been presented.

[fol. 6961] Trial Examiner Batten: You proceed.

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MARJORIE GREEN, a witness recalled by and on behalf of intervener Donnelly Garment Workers' Union, having been previously duly sworn, was further examined and testified as follows:

Direct Examination

By Mr. Tyler:

Q. Will you state your name, please?

A. Marjorie Green.

Q. You are the same Marjorie Green who testified in the previous part of this hearing held in 1939, are you not?

A. Yes, I am.

Q. Where are you employed?

A. Donnelly Garment Company.

Q. How long have you been there?

A. About nine years.

Q. Practically continuously? A. Continuously.

Q. Now, Miss Green, did you ever see any instructor at the Donnelly plant gather or call the girls in her section together and take them in a group to a Donnelly Garment Workers' Union meeting?

[fol. 6962] A. No, I didn't.

Mr. Tyler: What was the custom at the Donnelly plant as to whether employees attended meetings of the [fol. 6963] Donnelly Garment Workers' Union with whom ever they pleased and in such manner as they pleased, or whether there was any pressure or orders put upon them to attend in certain groups or in a certain manner?

A. They attended as they pleased.

Mr. Tyler: You were a member of the executive committee in some year, were you not, Miss Green?

A. Yes.

Trial Examiner Batten: Now, Mr. Tyler, those questions thus far, I think, come within my ruling and I will strike the answers, and the answers may stand as an offer of proof.

Mr. Hogsett: Respondent respectfully excepts to that ruling.

By Mr. Tyler:

Q. Now, Miss Green, you were a member of the executive committee in some year?

A. Yes, I was.

[fol. 6964] Q. What year was it?

A. 1937, 1938, and part of 1939, I believe.

Q. Were you ever paid by the Donnelly Garment Company or the Donnelly Garment Sales Company for attending any meetings of the Donnelly Garment Workers' Union? A. No, I was not.

Q. Were you ever paid by the Donnelly Garment Company or the Donnelly Garment Sales Company for attending any meetings of the executive committee of the Donnelly Garment Workers' Union? A. No, I wasn't.

Q. Did you ever see women employees at the Donnelly plant wear their work aprons to the meetings of the Donnelly Garment Workers' Union that occurred after working hours? A. Quite often, yes.

Q. Was that a common occurrence or not?

A. Yes, it was.

Mr. Tyler: That's all.

Trial Examiner Batten: Now, the last two questions, I think, also come within my prior ruling.

Mr. Tyler: They are stricken, but the answers may stand as an offer of proof?

Trial Examiner Batten: Yes. If you will permit me, I will say the answers are stricken and they will stand as an offer of proof.

[fol. 6965] Mr. Hogsett: Respondent respectfully excepts to the ruling.

Cross-Examination

By Miss Weyand:

Miss Weyand: Were any deductions ever made from your check for any time you took off to do Donnelly Garment Workers' Union matters?

[fol. 6966] A. I took no time off from the company to attend Donnelly Garment Workers' Union meetings.

Miss Weyand: How long a lunch period did you have?

A. An hour.

[fol. 6967] Trial Examiner Batten: Mr. Tyler, I am still more convinced that any more witnesses along this line—it isn't only cumulative but it is repetitious, especially if they testified in the prior hearing, as was indicated this morning. If you have witnesses you want to present who will testify to specific matters or other matters, you may produce them.

Mr. Tyler: I have one witness who will testify to an entirely separate state of facts. But I except to Your Honor's ruling, and I would like to make an offer of proof.

[fol. 6968] Trial Examiner Batten: You may do so.

Mr. Tyler: I offer to prove by the following witnesses: Rose Todd, Hobart Atherton—

Mr. Tyler. (Continuing) —Hobart Atherton, Walter Higgins, Mary McClellan, and Freeland Rife, that if permitted to testify they would testify that they were members of the Donnelly Garment Workers' Union between April 27, 1937, and July 15, 1939; and that at some part of that time they were members of the executive committee of the Donnelly Garment Workers' Union; and that at no time and on no occasion during that period were they ever paid by the Donnelly Garment Company or the Donnelly Garment Sales Company for attending Donnelly Garment Workers' Union meetings or meetings of the executive committee of the Donnelly Garment Workers' Union; and that they had no knowledge of and never saw any instructor gather the employees in her section together and take them as a group to any meeting of the Donnelly Garment Workers' Union; and that the employees were free to attend such meetings with whom and in such manner as they chose, without any interference, dictation or pressure from the employer; and that the women

employees in the Donnelly plant frequently attended meetings of the Donnelly Garment Workers' Union [fol. 6969] held after working hours while still wearing their work aprons; and that they were never paid for the time spent at any meetings of either the Donnelly Garment Workers' Union or the executive committee of the Donnelly Garment Workers' Union by the Donnelly Garment Company or the Donnelly Garment Sales Company.

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Trial Examiner Batten: I will reject the offer for the reasons I have previously stated.

Mr. Hogsett: Respondent joins in the offer and respectfully excepts to the ruling of the Examiner.

Trial Examiner Batten: Of course, understand, my rejection of the offer, under those circumstances, would be also applicable to you.

Mr. Hogsett: I so regard it, and it is perhaps unnecessary for me to repeat these exceptions, but I think it can't do any harm. I am doing it respectfully, in order to preserve the record.

Trial Examiner Batten: You may do so.

Mr. Tyler: Mr. Ingraham, will you take the stand please?

R. J. INGRAHAM, a witness called by and on behalf of intervenor Donnelly Garment Workers' Union, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Tyler:

Q. Mr. Ingraham, you have been in attendance at the hearing of this case for the past several days, have you not? A. Yes, I have.

Q. Did you hear the testimony of Marguerite Keyes, who was on the stand, I believe, Monday?

A. I heard her testimony when she testified.

Q. Her testimony referred to an alleged telephone conversation sometime in the spring of 1937 between Mr.

Keyes and yourself. Did you hear that testimony?
[fol. 6971] A. Yes.

Q. Will you state what the facts are about that matter?

A. Well, I never had any such telephone conversation with Mr. Keyes or anyone else. I never discussed with anyone the employment of an attorney for the Loyalty League. I never represented the Loyalty League and I never was consulted by the Loyalty League.

In the second place, it is, of course, rather absurd that I would call Mr. Keyes, who was a layman, and ask him what he thought of a lawyer, Gossett, or anyone else. I have practiced law for 20 years or more in Kansas City and I don't think I needed any advice from Mr. Keyes as to whether Mr. Gossett or anybody else was a good lawyer, and I know I never had any such conversation.

Q. Do you know when Mr. Keyes first came to Kansas City?

A. Oh, I don't recall exactly. It was possibly in 1933 or 1934.

Q. Did you ever have any conversation with Rose Todd suggesting any lawyer for the Loyalty League or the Donnelly Garment Workers' Union?

A. No, I never did.

[fol. 6972] Mr. Tyler: Under the rulings of the Examiner, the intervener rests.

Trial Examiner Batten: Now, Mr. Tyler, just a moment. I want to know what rulings you are referring to before I accept your rest.

Mr. Tyler: Your rulings that further testimony would be cumulative and allowing me to make an offer of proof.

Trial Examiner Batten: Is there anything further in the line of testimony?

(No response.)

If not, is there anything further along any line?

Mr. Hogsett: Your Honor, I'm not certain what the status of the record is with respect to certain written offers of proof.

[fol. 6978] Trial Examiner Batten: I think first we will check on the exhibits. Board's Exhibit No. 1 I will come to in a few minutes.

Board's Exhibit No. 32, which is a wage and hour statement, of course, was covered by my striking of certain testimony of Mrs. Reed subsequent to July 15, 1939.

[fol. 6979] Respondent's exhibit No. 43, which is the Judge Miller findings, and so forth, I reserved decision on. I will receive that. I checked on the record and I find that it is in there once before in an offer of proof. I will receive it, although if I write a report I will have to pass upon the question of what it is material to; I am not passing upon that point now. I meant by that, because I am receiving it, it doesn't necessarily mean that it has a direct connection with any testimony, but I will pass upon that later.

[fol. 6980] Trial Examiner Batten: Now, my notes indicate that there is some question about the status of Board's exhibit No. 1-SSSSS. However, I checked the record and I find that it has been received. That was the "Offer of [fol. 6981] Proof and Protest Against Ruling of Examiner Made August 19, 1942." That offer was denied.

On September 4, Mr. Ingraham made a motion to withdraw the name of Ella Mae Hyde from an offer of proof, as I recall it. That motion will be allowed.

On September 8—I believe that was the date—respondent reoffered certain offers of proof and reoffered respondent's exhibit No. 2 and intervenor's exhibit No. 20 (rejected). I reserved decision on those. Those offers are now denied.

Trial Examiner Batten: Oh, no,— Mr. Ingraham re-offered certain of the offers of proof that were given in the prior hearing, and reoffered respondent's exhibit No. [fol. 6982] 2 of the prior hearing, and intervenor's rejected exhibit No. 20 of the prior hearing.

Mr. Tyler: That immediately followed the reoffer of—

Trial Examiner Batten: Just a minute. I will get to that. I have it here, Mr. Tyler. However, before getting to your matter, Mr. Tyler, I have another matter here.

There are pending in the record Board's exhibits Nos. 1-TTTTTT, 1-UUUUUU, 1-VVVVVV, 1-WWWWWW, and 1-XXXXXX; which are offers of proof by the respondent. I reserved decision on those. Those offers of proof are rejected. That was on— I don't have the date on that, but—

Mr. Lane: 1-XXXXXX is the intervenor's offer.

Trial Examiner Batten: 1-XXXXXX? Yes, you are correct. 1-TTTTTT, 1-UUUUUU, 1-VVVVVV, and 1-WWWWWW are respondent's offers, and they are rejected. 1-XXXXXX is the intervenor's offer, and that is rejected.

Now, on the other matter, Mr. Tyler, your reoffer of intervenor's exhibit No. 20 (rejected),— You reoffered that?

Mr. Tyler: Yes.

Trial Examiner Batten: That reoffer is rejected.

On September 11, Miss Weyand made an offer of proof with respect to Board's exhibit No. 39-A, 39-B, 39-C, 39-D, and 39-E (rejected), and that offer of proof is rejected. I had reserved decision on that.

Now, in order that the record be clear, yesterday—no, [fol. 6983] on the 15th— Was the 15th yesterday?

Miss Weyand: No. The day before.

Trial Examiner Batten: Yes, the day before. —respondent made an offer of proof regarding the testimony of three witnesses employed in section 518 and an offer of proof with respect to three witnesses employed in section 413. Now, I think those offers of proof were rejected, although I am not clear about it. If the record is not clear, those two offers of proof are rejected.

Now, as far as my notes are concerned, that covers all matters which I have that are pending.

Mr. Hogsett, do your records indicate anything further?

Mr. Hogsett: Mine do not.

Trial Examiner Batten: Mr. Tyler?

Mr. Tyler: Nothing except what Mr. Lane will now offer.

Mr. Lane: When we reconvened after the recess during which the matter of designation of a new Trial Examiner was under consideration, Your Honor suggested that the intervenor file a written pleading joining in the respondent's motion for the designation of a different Trial Examiner and affidavit of prejudice, and, also, application for continuance. We have joined in both of those matters and I have now prepared a written pleading, if Your Honor cares to have it for the file.

Trial Examiner Batten: Yes. That will be Board's ex-[fol. 6984] hibits No. 1-~~ZZZZZ~~. Do you have a duplicate of that, Mr. Lane?

It will be received.

Yesterday there was a witness, Mary Copowycz, on the stand, and during the cross-examination of Mr. Tyler, which begins at page 6879, the question at line 2, the question at line 6, and the answers thereto, the question at line [fol. 6985] 4, page 6882, and the answer, and the question at line 8, and the answer—those questions and answers are stricken, in accordance with my prior ruling on those other witnesses. Those are the questions which I find are the same as the others, Mr. Tyler. The answers may stand as an offer of proof.

Mr. Hogsett: Respondent adds here its exception to that order.

{fol. 4] Board's Exhibit 1-YYYY.

Date 7/6/42 — Witness

Order Vacating Decision And Order, Reopening Record,
Referring Proceeding To Regional Director, And
Directing Further Hearing.

United States Of America
Before The National Labor Relations Board.

In the Matter of

Donnelly Garment Company
and

International Ladies' Garment Workers' Union
and

Donnelly Garment Workers' Union, Party to the Contract.

Case No. C-1382.

The Board, on March 6, 1940, having issued a Decision and Order in the above-entitled proceeding; petitions to review and set aside the said Order having been filed in the United States Circuit Court of Appeals for the Eighth Circuit by Donnelly Garment Workers Union and Donnelly Garment Company, and, thereafter, on November 6, 1941, the said Circuit Court having entered its Opinion and Decree remanding the case to the Board for further proceedings not inconsistent therewith, and the Board having duly considered the matter and being fully advised in the premises,

It Is Hereby Ordered that the Decision and Order of the National Labor Relations Board, issued herein on March 6, 1940, be, and it hereby is, vacated and set aside; and

It Is Further Ordered that the record herein be reopened, that a further hearing be held for the purpose of taking additional evidence in accordance with the said Opinion and Decree of the aforesaid Circuit Court; and

It Is Further Ordered that the proceeding be, and it hereby is, referred to the Regional Director for the Seventeenth Region for the purpose of conducting such further hearing, and that the said Director be, and he hereby is,

authorized and directed to issue notice of such further hearing.

Dated, Washington, D. C., April 21, 1942.

By direction of the Board:

BEATRICE M. STERN,
Executive Secretary.

(Seal)

[fol. 61] (Board's Exhibit 1-RRRRRr)

Date 8/4/42 — Witness

Exceptions By Intervener, Donnelly Garment Workers' Union, To Order Denying Designation Of Another Trial Examiner And Order Denying A Continuance.

United States Of America

Before The National Labor Relations Board.

In the Matter of

Donnelly Garment Company

and

International Ladies' Garment Workers' Union

and

Donnelly Garment Workers' Union, Party to the Contract.

Case No. C-1382.

The intervener, Donnelly Garment Workers' Union, excepts to the order made by National Labor Relations Board on July 28, 1942 (Board's Exhibit 1 GGGGG) denying the application made by respondent, Donnelly Garment Company, and joined in by this intervener, for the designation of another trial examiner and application for continuance, and excepts to the rulings and actions of the trial examiner pursuant to such order for the following reasons:

1. Because upon the facts said order, rulings and action are contrary to law.

2. By said order intervener is denied due process of law contrary to the provisions of the Fifth Amendment of the Constitution of the United States in that intervener is

denied a full and fair hearing before a fair and impartial tribunal because the trial examiner, James C. Batten, has formed a fixed conclusion in his mind that the evidence which the Circuit Court of Appeals ordered received in this case has no probative value and should be given no weight or consideration.

[fol. 62] 3. Because the Board bases its order upon the erroneous assumption that the Circuit Court of Appeals ruled that trial examiner Batten was not shown to be biased or prejudiced whereas the Circuit Court of Appeals did not have presented to it and did not consider or rule upon the question of whether in receiving this evidence and making his findings and conclusions thereon and in making an intermediate report thereon said James C. Batten could act fairly and impartially and without a fixed opinion that such evidence was entitled to little or no weight or value.

4. Because said order in denying the continuance was, under the circumstances shown, an abuse of discretion upon the part of the Board.

FRANK E. TYLER,
LUCIAN LANE,
GOSSETT, ELLIS,
DIETRICH & TYLER;
Attorneys for Intervener,
Donnelly Garment Workers'
Union.

[fol. 63] Board's Exhibit 1-SSSSS.

Date 8/19/42 — Witness

(Offer of Proof by Respondent Donnelly Garment Company, against Ruling of Examiner made August 19, 1942.)

United States Of America
Before The National Labor Relations Board
Seventeenth Region.

In the Matter of

Donnelly Garment Company, Respondent
and

International Ladies' Garment Workers' Union
and

Donnelly Garment Workers' Union, Party to the Contract,
Intervener.

The respondent Donnelly Garment Company protests against the ruling this day made by the Examiner to the effect

(1) that the respondent shall not be allowed to place its witnesses on the stand in the order it desires.

(2) Against the ruling that the respondent shall not be allowed to continue and complete the examination of Wave Tobin before proceeding to the introduction of the evidence of other witnesses.

Respondent shows that Wave Tobin was sworn as a witness on the 12th day of August, 1942, and that her examination was not concluded but was interfered with at about 3:00 o'clock P. M. by the Examiner, engaging in a colloquy with counsel which consumed all of the time until the adjournment at 3:40 P. M. August 12, 1942.

Upon the resumption of the hearing on this day, the respondent sought to continue the examination of said witness Tobin.

[fol. 64] The respondent offers to prove by the said Tobin that under the customs existing in labor unions and especially in the I.L.G.W.U. in the year 1937 and immediately thereafter, instructors or those employed in similar occupations, whether known as instructors or by other names, and head cutters and head pattern makers, whether known as head cutters or head pattern makers or by some other designation, were generally and usually regarded as competent and proper members of a union and were received into such unions while engaged at the work of instructors, head cutters or head pattern makers.

Respondent further expects to prove by Wave Tobin that the I.L.G.W.U. organized strikes in the plants of the Gernes, Gordon and Missouri Garment companies in Kansas City in March, 1937. That said Tobin, acting as agent

and representative of the I.L.G.W.U., was in charge of said strikes and aided, abetted, encouraged and directed said strikes, and the violence there perpetrated; and to show by said witness the nature of said violence and activities, and that it was intended that these same methods should be employed against the respondent and its employees.

Respondent alleges on information and belief and offers to prove by said Wave Tobin that said Wave Tobin is acquainted with the kind and character of contracts made by the I.L.G.W.U. with garment manufacturers in Kansas City and elsewhere; that Wave Tobin is acquainted with the methods of manufacture and the division of work in garment plants; and that employees in garment plants doing directory work are eligible for membership in the I.L.G.W.U.; and respondent states that it intends to show and can show by said Wave Tobin that the wages provided for in said contracts and paid under said contracts between the I.L.G.W.U. and garment manufacturers in 1937 [fol. 65] and at the present time are far less than the wages paid by respondent, and to show other provisions of said contract, all to the end of showing how and why the employees formed the plant union, and that it was organized for the purpose of preserving and improving the advantages they had in wages and conditions of labor and to protect themselves against the strikes, wrongs and outrages threatened to be visited upon them.

Respondent expects to develop from the testimony of the said Tobin, if she is permitted to testify, many other facts and circumstances bearing upon the issues of this case, and states that it is advised and believes that the facts to be developed will be of material assistance to respondent in the preparation and presentation of its case.

Respondent therefore renews its request that it be permitted to continue the examination of Wave Tobin at this time and to present its other witnesses in the order which respondent may see fit.

JAMES A. REED,
R. J. INGRAHAM,
WM. S. HOGSETT,
BURR S. STOTTLE,
Attorneys for Respondent.

[fol. 67] Board's Exhibit 1-TTTTT.

Date 9/8/42 — Witness

(Supplemental Offer of Proof by Respondent, Donnelly Garment Company, against Ruling of Examiner Made August 19, 1942, in respect of Testimony of Wave Tobin.)

Now comes respondent Donnelly Garment Company, and supplementing its offer of proof made August 19, 1942, in respect of testimony of Wave Tobin, further offers to prove by said witness Wave Tobin the following facts:

That as manager of the Kansas City Joint Board of the International Ladies' Garment Workers' Union she has custody of and access to records of said Kansas City Joint Board; that such records if produced would be identified by said witness as authentic and accurate; and that such records would show that in garment plants in Kansas City, Missouri, having contractual relations with the International Ladies' Garment Workers' Union, head cutters, head pattern makers, head examiners and instructors (whether known as head cutters, head pattern makers, head examiners and instructors or by some other designations) are treated as eligible for membership, and are accepted as; and in fact are, active members in the International Ladies' Garment Workers' Union; that this is true at the present time and has been true at all times during the years of 1937, 1938, 1939 and subsequent years, [fol. 68] while said plants have had such contractual relations; that the eligibility and acceptance of such head cutters, head pattern makers, head examiners and instructors (whether known as head cutters, head pattern makers, head examiners and instructors or by some other designations) as members of the International Ladies' Garment Workers' Union is in no wise exceptional or unique, but is conventional in the ladies' garment industry and in the operation of unions in that industry, and is in accordance with the well recognized usages and customs which prevail now, and which in the years 1937, 1938, 1939 and subsequent years have at all times prevailed, in the

ladies' garment manufacturing industry and in the operation and administration of the International Ladies' Garment Workers' Union, not only in Kansas City, Missouri and its trade territory but nationally.

JAMES A. REED,
ROBT. J. INGRAHAM,
WILLIAM S. HOGSETT,
BURR S. STOTTLE,
Attorneys for Respondent.

[fol. 70] Board's Exhibit 1-UUUUU.

Date 9/8/42 .. Witness

(Offer of Proof by Respondent, Donnelly Garment Company, relating to Witness Erwin Feldman.)

Now comes respondent Donnelly Garment Company and offers to prove by witness Erwin Feldman the following facts:

That he is now and for many years past has been engaged in the active practice of the law with his office at 1350 Broadway in New York, N. Y.; that he is now and has been during most of said time engaged in legal representation of ladies' garment manufacturing companies, many of which have been and are now in contractual relations with International Ladies' Garment Workers' Union; that he is counsel for manufacturers has frequently negotiated contracts with such union; that in addition to the foregoing he is now and for some years past has been the managing director of an association composed of ladies' garment manufacturers engaged in the same character of manufacture as respondent; that as a result of all the foregoing he is intimately familiar with the usages, customs and practices, with respect to the eligibility or ineligibility of employees of such manufacturers for membership in the International Ladies' Garment Workers' Union, which prevail now and which have prevailed in the years 1937, 1938, 1939 and subsequent years.

[fol. 71] That in plants of ladies' garment manufacturers generally throughout the nation, having contractual relations with the International Ladies' Garment Workers'

Union, head cutters, head pattern makers, head examiners and instructors (whether known as head cutters, head pattern makers, head examiners and instructors or by some other designations) are commonly and conventionally treated as eligible for membership, and are accepted as and in fact are active members, in such union; that this is true at the present time and has been true at all times during the years above referred to in plants having contractual relations with such union; that this usage, custom and practice is in no wise exceptional or unique or limited to any particular trade territory, but is usual, general and conventional. That this is true now and has been true at all times in the years above referred to.

JAMES A. REED,
ROBT. J. INGRAHAM,
WILLIAM S. HOGSETT,
BURR S. STOTTLE,
Attorneys for Respondent.

[fol. 73] Board's Exhibit 1-VVVVV.

Date 9/8/42 .. Witness

(Offer of Proof by Respondent, Donnelly Garment Company.)

In view of the Trial Examiner's ruling in the former hearing admitting (over Respondent's objections) extensive testimony from the old NRA hearing (upon which testimony the Trial Examiner and Board based many of its findings) and in view of the Trial Examiner's ruling in the present hearing (Record pp. 4314-4316) refusing to permit employees to testify concerning matters which occurred in connection with said old NRA hearing, the Respondent offers to prove by each of the employees called in this hearing and by each of the employees of the Respondent enumerated in Intervener's Exhibit No. 20 (rejected), which exhibit appears in the record herein at pages 6058-6094, that they respectively heard of the charges of the ILGWU in connection with the old NRA hearing, to the effect that the Donnelly plant was a "sweatshop", and that working conditions therein were bad and that Donnelly employees who

joined the ILGWU were discriminated against; that none of those charges were true; that the Donnelly plant was in [fol. 74] no sense a "sweatshop"; that on the contrary, working conditions therein were healthful and pleasant for the employees; that they respectively never heard of any discrimination or threatened discrimination by the Donnelly Garment Company, or any of its supervisory employees, or by any instructors or thread girls, against any employee of the Donnelly Garment Company because of affiliation with the ILGWU; that the attitude of Respondent's executives and supervisory employees at all times within their knowledge has been that the employees were free to belong or not to belong to any union as they might desire, and that their employment status would not be affected thereby; that said employees were not coerced, intimidated or influenced in any way by any of the acts or statements of Respondent's executives, supervisory employees, or by the instructors or thread girls, as charged by the ILGWU in the old NRA hearing.

JAMES A. REED,
ROBT. J. INGRAHAM,
WILLIAM S. HOGSETT,
BURR S. STOTTLE,
Attorneys for Respondent.

[fol. 76] Board's Exhibit 1-WWWWW.

Date 9/8/42 ... Witness

(Offer of Proof by Respondent, Donnelly Garment Company, relating to Witness Meyer Perlstein.)

Now comes respondent Donnelly Garment Company and offers to prove by witness Meyer Perlstein the following facts:

That he is a vice president and a member of the General Executive Board of the International Ladies' Garment Workers' Union and has been for some years last past; that previously he was for some five or more years the Southwest Regional Director of said union, having charge of its affairs in several states of the southwest including Missouri.

That Exhibit A attached hereto is a true and correct printed copy of an Agreement between the Chicago Association of Dress Manufacturers with the International Ladies' Garment Workers' Union and Chicago Joint Board of Locals 5, 18, 59, 81 and 100 I.L.G.W.U., dated March 1, 1936.

That Exhibit B hereto attached is a true and correct typewritten copy (except signatures which are omitted [fol. 77] from this copy) of a Memorandum Contract entered into between the Associated Garment Industries and the International Ladies' Garment Workers' Union covering the dress industry in the St. Louis Market.

JAMES A. REED,
ROBT. J. INGRAHAM,
WILLIAM S. HOGSETT,
BURR S. STOTTLE,
Attorneys for Respondent.

AGREEMENT

BETWEEN THE

**Chicago Association of Dress
Manufacturers**

with the

**International Ladies Garment
Workers Union**

and

**Chicago Joint Board of Locals
5, 18, 59, 81 and 100
I. L. G. W. U.**

CHICAGO, 1936

Exhibit A

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Agreement



AT a conference of representatives of the **Chicago Association of Dress Manufacturers**, hereinafter referred to as the "Association," representatives of the **International Ladies Garment Workers Union**, and representatives of the **Chicago Joint Board of Locals 5, 18, 59, 81 and 100, I. L. G. W. U.**, hereinafter referred to as the "Union," the following agreement has been made:

1. **Parties.** The Association, for itself and on behalf of its members, agrees to perform all the provisions of this agreement, and the Union agrees for itself and on behalf of its members, now employed and that may hereafter be employed by the members of the Association, to perform all of the provisions hereof on its and their part to be performed, and for and on behalf of its members agrees that they will perform their work conscientiously and faithfully.

2. **Union Shops.** The Association obligates itself, for itself and its members, that its members will maintain Union shops for the following class of employes represented by said Union, in which the standards hereinafter provided for will be maintained, and that they will employ none but members in good standing of the operative employes as herein enumerated: Cutters, operators, pinkers, basters, pressers, drapers, finishers, examiners, cleaners, special machine operators and sample makers.

3. **Head Cutters.** Head cutters who are members of the Union may nevertheless exercise the duties in their directory capacities over other cutters without becoming subject to censure or discipline by the Union, providing such head cutters do not violate the provisions of this contract. Head cutters who are not members of the Union shall not be allowed to cut, except original samples only.

4. **Calls for New Workers.** The Association agrees that their members will call the Union when in need of new workers. The Union agrees to furnish the employer with such workers, who are to the best of their knowledge competent to do the work required from amongst the number of unemployed workers.

5. **New Help to Join Union.** It is further agreed when there are no unemployed Union workers, the employer may engage workers who are not members of the Union, providing however, that such workers will become members of said Union at the end of the probation period if retained by the employer.

6. **Trial Period — (New Employees).** The employer shall have the right to discharge any employee at any time within a period of one week from the date of the beginning of employment. By mutual consent of the Association and the Union, the trial period may be extended for one additional week. This right of the employer shall be absolute and not subject to review. After such trial period the employer may discharge his employees for causes such as: incompetency, misconduct, insubordination in the performance of work, breach of reasonable rules jointly established and soldiering on the job.

7. **Distribution of Work.** Whenever there is insufficient work for all of the employees in the specific crafts, the available work shall be divided amongst them as equally as possible. It is also agreed that during the dull period of employment, the employer will not, as a matter of general practice, call in any employees to work unless the work to be performed shall yield at least a half day's pay to the employees so called in.

8. **Shop Chairmen Functions.** In each shop there shall be a shop chairman or chairlady elected by workers of said shop, whose functions shall be to help maintain harmony amongst employees, and to endeavor to adjust with the employer the complaints of the employees.

9. **No Meetings During Working Hours.** No shop meetings and no cessation of work shall take place during regular working hours, and all shop chairmen and chairladies shall perform all of

the regular duties of their particular crafts the same as any other employe.

10. **Visitation.** Representatives of the Union shall have access to the employer at any time during working hours to adjust complaints between employer and employes. Access to the work-rooms shall not be oftener than once monthly and then only if accompanied by the employer or his representative.

11. **Working Time.** A standard working week shall consist of thirty-five (35) hours to be performed in five (5) days of seven (7) hours per day, beginning on Monday and ending on Friday, to be worked between the hours of 8:30 A. M. and 4:30 P. M. with one hour interval for lunch.

12. **Time and Pay Records.** It is further agreed that each employer shall have a time clock and keep accurate time put in by the workers in the performance of work. However, it is agreed that no worker shall be required to be in the shop unless there is work for him to do. It is further agreed that the employer will send in monthly a correct duplicate of payroll records of the Union employes to the Impartial Tribunal which shall be accessible to the duly designated representative of the Union and to the designated representative of the Association.

13. **Overtime.** Since the parties were unable to reach an agreement as to the question of overtime, and since both parties desire to maintain harmony in the market and to avoid unnecessary disturbance in the production that would be of no benefit to either of the parties, it is, therefore, agreed between them that the matter of overtime shall be submitted immediately upon the execution hereof to an arbitrator selected by both parties and who shall render his decision within four weeks. The decision of the arbitrator when rendered shall be binding upon the parties and become a part of this contract for the life thereof. Pending such decision, the Union agrees to permit the workers to work one hour a day overtime in case of necessity.

14. **Piece Work Employes.** Piece work employes shall be compensated on a piece work basis. The fixing of the price per

garment on which work is to be performed shall be determined at the rate to yield to the worker the earning of the following minimums:

| | | |
|-----------------------|-------------------|----------|
| Pressers | \$.95 | per hour |
| Operators | .76 | " " |
| 1st and 2nd Finishers | .55 $\frac{1}{4}$ | " " |

15. **Finishing — Piece or Week Work.** A change in the system of work in the finishing crafts from week work to piece work or from piece work to week work shall only be made at the beginning of a season.

16. **Twenty-five Per Cent Additional for Duplicate.** All piece workers shall receive not less than twenty-five per cent (25%) above settled stock prices for duplicates, providing, special workers are selected or special attention is required to do the work.

17. **Thirty-five Per Cent (35%) Additional for Samples.** All pressers working piece work pressing samples shall receive not less than thirty-five per cent (35%) above the settled stock price; however, it is understood that the employer may select pressers to do the work from amongst those employed by him.

COMPENSATION AND WAGES FOR WEEK WORKERS

18. **Sample Makers.** Sample Makers shall be paid on the week work basis and shall receive a wage of not less than Twenty-five Dollars and Fifty Cents (\$25.50) for full time per week.

19. **Drapers.** Drapers shall be paid on a week work basis and shall receive a wage of not less than Twenty-three Dollars (\$23.00) for full time per week; excepting in such shops where piece work system is practiced at the time of the signing of this agreement such piece work system may continue, providing however, that such workers earn not less than the minimum wage scale.

20. **Examiners.** Examiners shall be paid on the week work basis and shall receive a wage of not less than Eighteen Dollars (\$18.00) for full time per week.

21. **Special Machine Operators.** Special Machine operators shall work by the week and receive a minimum of Eighteen Dollars (\$18.00) for full time per week.

22. **Basters.** Basters shall be paid on the week work basis and shall receive a wage of not less than Fifteen Dollars (\$15.00) for full time per week. Basters are only those employed exclusively in the work of performing the basting operation, meaning that the needle work done is of a temporary character; the baster is not to do finishing work.

23. **Cleaners and Pinkers.** Cleaners and pinkers shall be paid on the week work basis and shall receive a wage of not less than Fourteen Dollars and Fifty Cents (\$14.50) for full time per week.

24. **Sorters.** Sorters who are members of the Union shall be entitled to the benefits of this agreement and shall be paid not less than Fourteen Dollars (\$14.00) minimum.

25. **Cutters.** It is further agreed that all cutters now employed shall receive an increase of Two Dollars (\$2.00) per week, provided the pay of such cutters was not increased in the past sixty days. It is further agreed that the minimum scale of cutters shall be Forty Dollars (\$40.00) for a full week's time and the minimum scale of cutters who also do grading shall be Forty-one Dollars (\$41.00) for a full week's time. In the event cutters complain that the powder used in the process of performing their work is injurious to their health, and upon test of a chemist, such powder should be found injurious to the health of the workers, that the powder will be eliminated.

26. **Employment of Cutters.** With the genuine desire on the part of the Association and the Union to employ non-employed cutters, it is agreed that upon the execution of this agreement a joint committee shall investigate the shops with the view in mind to place, if possible, additional cutters to work.

27. **Minimum Number of Cutters.** A shop operating with more than six machines shall employ at least one cutter. A shop operating with more than eighteen (18) machine operators shall employ not less than two (2) cutters.

28. Apprentice Cutters. It is further agreed that no new apprentices shall be taken on as long as full fledged cutters are out of employment.

29. No Reductions. It is further agreed that during the life of this agreement there shall be no reductions of wage rates of piece workers or week workers unless it is mutually consented to by the Union and the Association. Any settlement made by a week worker and the employer below the minimum scale or any rate received by a piece worker less than the settled rate, shall be considered a private deal and be deemed a violation of this contract.

30. Deficient Help. It is agreed between the parties that scales of week work employes and piece work employe, as hereinabove period, shall not apply to employes who are deficient in their production by reason of their age, physical condition, or otherwise found to be deficient, and that the wages for such workers shall be agreed upon between representatives of the Union and the Association.

31. Differential for Low Priced Garments. Regarding the scale of prices for workers in the City of Chicago employed on garments sold for \$3.75 and below — such workers shall receive not less than fifteen per cent (15%) below the minimum scales set forth in this agreement for a full week's work. In no event shall it be less than Fourteen Dollars (\$14.00) per week.

32. Price Committee Inside Shops. In each inside shop a separate price committee shall be selected for each craft. The persons so selected shall be fully representative of their craft. Such committees shall consist of not more than three persons and the shop chairman or chairlady where a shop has fifty employes or less in the particular craft, and of not more than four persons and the shop chairman or chairlady where a shop has more than fifty employes in the particular craft. The price committee shall be selected by the workers from amongst their members.

33. Agreed Settlements Binding. Price settlements by the committee and employer or his representative, shall be taken up

and discussed outside of regular working hours only. The price fixed and agreed upon shall be signed by both employer and price committee, and shall be binding on the parties. Should it be necessary to resort to other provisions herein provided for, for the settlement of prices, such settlements may be made during regular working hours.

34. Settlement of Piece Work Rates. The determination of prices for the operations performed by piece workers for garments made during each week, shall be settled by the price committee hereinabove provided for on the part of the employees, and the employer or his representative at the end of each week. If no agreement is reached by said committee, same shall be referred to the duly authorized representatives of the Union and the Association. If the matter cannot be settled through the mediation of such representatives, the matter may be submitted to a committee composed of one selected by the Association and one selected by the Union. Should any of them fail to agree, the matter shall be referred to the Price Arbitrator hereinafter provided for, to determine a fair price for the garments in dispute, whose decision shall be binding. In all events a settlement shall be reached within the following week.

35. Price Arbitrator. The parties shall, within ten (10) days from the date of the execution of this agreement, jointly agree upon one person familiar with the manufacture and production of dresses, who shall be known as "Price Arbitrator." To him shall be referred all questions regarding price settlements which cannot be adjusted between the employer and the respective price committee herein provided for, nor adjusted between the Union representative and the Association representative, or a Special Committee, as herein provided. His tenure of office shall follow in the same manner as in this contract provided in respect of the Impartial Tribunals.

36. Reference to Price Arbitrator. The Price Arbitrator shall have authority to hear and determine the matter in his own way and shall have the right to call upon the employer or price committee, to hear and consider evidence submitted by any party, to obtain sufficient data, make tests, and to use any other practical

measures deemed by him necessary to reach a just and fair conclusion under the terms of this contract.

37. **Finding Retroactive.** He shall give a written report of his findings to the Association, the Union and the Employer, and his price decision shall be retroactive to the beginning of the process.

All parties hereto agree to be bound by the decision of such Price Arbitrator when made.

38. **Compensation.** The compensation of the Price Arbitrator shall be borne equally between the Association and the Union.

39. **Holidays.** All employees paid on a weekly basis shall be paid for the following legal holidays, to wit: New Year Day, Decoration Day, Fourth of July, and Labor Day. During the week in which such legal holiday occurs, employees working less than a full week shall be paid for the holiday pro rata for the hours worked; however, in no event shall they be paid less than one-half day for such legal holiday. The workers have a right to refrain from working on the first of May without pay. Pay day shall be weekly on a designated day; it shall be either on a Tuesday or Wednesday.

40. **Contractors.** On and after April 15, 1936, a member of the Association operating with contractors shall settle prices on garments to be produced by contractors on his own premises, or in any other permanent place where he may designate, by a price committee comprising representatives of each contracting shop, in which event the price committee shall consist of no more than five; provided, however, if the employer in question operates with more than three contractors, the committee shall consist of one representative of each contracting shop and two representatives of the inside shop, if he has one.

41. **Price Committee—Inside Production Only.** Garments which are designated to be made in inside shop only and which will not be sent to be made at a contractor's shop shall be considered by the price committee selected only from amongst the workers of the inside shop.

42. **Union Contractors Preferred.** A member of the Association who employs contractors shall employ only such contractors who are in contractual relation with the Chicago Joint Board of the I. L. G. W. U.

43. **Manufacturer Responsible for Pay.** A member of the Association who employs contractors shall be responsible to the members of the Union for the payment of their wages for work done by them on garments made by their employers for such Association member, providing such liability shall be limited to wages for one full week and two days in each instance, and provided further that notice of default is given to the Association within three days after such default.

44. **Sharing Work Among Contractors.** A member of the Association who employs contractors exclusively working for him shall share work with the contractors during slow periods of employment.

45. **Contractors to be Registered.** Any member of the Association who works with contractors now shall register with the Association and with the Union, the name and addresses of the contractors so employed, and shall specify whether such contractors are employed to work for them exclusively, permanently or temporarily. When taking on new contractors, the employer is required to register the names and addresses of such contractors with the Association and the Union before giving any work to him.

46. **Inside Workers Preferred.** A member of the Association who is not employing contractors permanently shall not give work to any contractors unless workers in the inside shop are fully employed.

47. **Notice Before Strike on Contractor.** The Union agrees that before calling a strike or stoppage on a registered contractor who works for a member of the Association, the Union will give notice to the Association who will endeavor to adjust the dispute

in question between the Union and such contractor within thirty-six hours.

48. **No Work for Firms on Strike.** No employe shall be required to work on orders placed by a manufacturer or contractor against which the I. L. G. W. U. maintains a strike.

49. **Employers' Hours Limited.** Employers shall not engage themselves in any work belonging to the enumerated crafts before or after working hours.

50. **Adjustment of Grievances.** All complaints and controversies or grievances (except price settlements which shall be taken up in the manner hereinabove provided for), arising between the parties hereto or between an employer and any employe hereunder during the life of this agreement, which shall not have been adjusted by the shop chairman or chairlady with the employer, shall be set forth in writing and jointly investigated by the manager of the Association and by the manager of the Union or their deputies. When such representatives shall have arrived at a decision it shall be binding upon the parties hereto. Should such representatives fail to agree, the matter shall then be referred by them to the Impartial Tribunal hereinafter provided for.

51. **IMPARTIAL TRIBUNAL.** The parties hereto agree between them that within two weeks from the date of the signing of this agreement, they will agree upon

who is hereby declared to be the Impartial Tribunal, whose duties and functions shall be to hear and determine and render decisions on all complaints, grievances or controversies which may arise during the term of this contract which cannot, in the first instance, be otherwise disposed of under the provisions hereof.

52. **Deficiency on Minimums.** The Impartial Tribunal shall also have the right to sit in judgment on complaints of the

Union that piece workers in any shop are not earning the minimum scales as provided herein. The Impartial Tribunal may consider and determine the complaint of the Association that, either the piece rates in any non-member shop are too low, or that the minimums in this contract provided for are not earned by workers in such non-member shop. Upon hearing such complaints he may render any decision he deems fair and just, and his decision shall then supercede any decision made on the settling of piece rates.

53. **Notice of Hearings.** The Impartial Tribunal shall, with all due dispatch, set a date for the hearing, notify the parties in any manner deemed necessary by him, and he may for such purpose recognize a representative of the Union, and the representatives of the Association, as the parties to whom notice will be sufficient in each case.

54. **Evidence.** He shall have the authority to call for any evidence, written or oral. The parties affected may present any evidence, written or oral, but the same shall only be of matters pertinent to the complaint.

55. **Powers.** (a) The Impartial Tribunal shall have power to enter any finding, fine, penalty, punishment or other order which, in his sole discretion, seems just and reasonable, having due regard for justice and equity in each case, and not in conflict with the provisions of this contract or the law of the land. Cases based on complaint of unjust discharge of an employe shall have precedence in the ordering of hearing over all other cases.

(b) Any discharge case which is brought before the Impartial Tribunal in which he decides to reinstate the worker, he may, in his discretion, award the worker compensation for loss of time either in part or in full for the time lost. Should a discharged worker be reinstated thru the mediation of the representatives of the Association and the Union and the matter of compensation for loss of time is disputed, it shall be referred to the Impartial Tribunal and he may, in his discretion award the worker compensation as herein above provided for.

56. **Compensation and Expenses.** The compensation of the Impartial Chairman shall be jointly contributed to equally by both parties, that is to say, the Association and the Union.

57. **Decisions Final and Enforced.** His decision shall be deemed and be accepted as final and binding upon all parties affected by such decisions, and his decisions shall be carried into effect, respectively, by every person, firm, member, employe, local, union or association named, and the failure to carry such decisions into effect, shall be deemed a violation of this contract.

Each case brought to the Impartial Tribunal or the Price Arbitrator shall be considered on its own merits and this agreement shall constitute the basis upon which each decision shall be rendered. No decision shall be used as a precedent for any subsequent case.

58. **Intpretations Only.** The Impartial Tribunal may interpret this agreement, but shall have no authority to alter or modify the same or any provisions hereof.

59. **Vacancy in Office.** Upon the failure, refusal to act, or resignation of the Impartial Tribunal, then the parties shall immediately agree upon a successor or successors as the case may be, during the term of this contract, such successor to exercise all the duties and have all the powers and right of the Impartial Tribunal.

60. **Term of Office.** The Impartial Tribunal shall hold office for six months from the date of the execution of this contract and for successive periods of six months thereafter during the life of this contract, provided, for thirty days' notice prior to the expiration of any six months term, or upon the failure, refusal to act or resignation of the Impartial Tribunal (and the parties being unable to agree upon the Impartial Tribunal or his successor within said thirty days), either party shall notify the other party and Governor HENRY HORNER of the desire to appoint a successor Impartial Tribunal. Said Governor Henry Horner, upon such failure of the parties to agree within said thirty day period, shall, himself,

act as such successor, or shall appoint such successor who shall have all the rights, power and duties of the Impartial Tribunal.

GENERAL PROVISIONS

61. **No Strikes, Stoppages, Lockouts.** During the term of this agreement there shall be no general lockouts, general strike, individual shop lockout, individual shop strike or shop stoppages for any reason or cause whatsoever. There shall be no individual lockout, strike or stoppages pending the determination of any controversy, complaint or grievance. Should the employees of any shop or factory cause a stoppage of work, notice thereof shall be given by the Association to the Union in writing. The latter obligates itself to return the striking employees to their work within twenty-four hours after the receipt of such notice. Should any member of the Association cause a lockout in his shop, notice thereof shall be given by the Union in writing to the Association, and the member obligates himself, within twenty-four hours after the receipt of such notice, to re-employ the workers. Should the employees fail to return to work at the expiration of the twenty-four hours, said employees shall be deemed to have abandoned their employment. Should the employer fail to terminate the lockout and to re-employ the employees within the said period, he shall be liable to the employees for the full amount of the wages lost by them from the date of the commencement of the lockout.

62. Rights and Duties of Parties to this Agreement.

(a) The Union agrees that in the interest of stability and the maintenance of fair working conditions in the industry, that upon the suspension, expulsion or resignation of a member of the Association, he shall automatically cease to be a party to, and lose all benefits of this contract, and that the Union will not enter into contractual relations, orally or in writing, with any such ex-member who has been suspended, expelled, or resigned from the Association, until such individual, firm, or corporation has made satisfactory settlement with the Association for any legitimate claim it has against him.

(b) The Association agrees not to admit to membership any manufacturer before such manufacturer settled any legitimate claim that the Union has against them.

63. **No Favoritism.** The Union further agrees that when entering into a contract with any individual, firm, or corporation engaged in the dress business, that none of them shall receive any benefit or aid, nor any more favorable terms or conditions, than is accorded to the members of the Association, pursuant to the terms of this agreement.

64. **Security from Non-Member.** The Union further agrees that before the Union or any of its members enter into contractual relation with a non-member of the Association, the Union will require substantial cash security deposit for the performance of any such agreement on the part of such firm, the amount of such cash security deposit shall be based on a schedule which shall take into account the size of the shop and the volume of business, provided, in the Association is aggrieved by any such contract or its manner of enforcement by the Union, it may submit any such matter to the Impartial Tribunal for decision. The Union agrees to co-operate with the Association in maintaining fair trade practice in the industry as customarily prevails in the Chicago market.

65. **No Home Work.** It is further agreed that no work shall be taken out from the factory to be done at home and that same shall constitute a violation of this agreement, and the employer and the worker shall be subject to penalties by their respective organizations.

66. **Electric Irons.** It is further agreed that an employer, when establishing a new factory, or moving his factory, will install only electric irons in his pressing department.

67. **Preference to Union Service Shops.** Members of the Association who give out work to service industries, agree to give

preference to such shops who are under contractual relations with the I. L. G. W. U.

68. **Cloak Union Standards.** The manufacture of garments which are identified as of a type belonging to the Cloak and Suit Industry, shall be manufactured under the prevailing Union standards in the Chicago Cloak and Suit Industry, if and when made by members of this Association.

69. **Reorganization.** The employer shall have the right to reorganize his shop. The reorganization herein provided shall be taken to mean a bona fide reorganization of the employer's business necessitated either by the curtailment or a fundamental change in the business or the character thereof. No reorganization shall take place unless fifteen day's notice of the intention to reorganize shall be given to the Union by the Association. Should such reorganization necessitate the discharge of any workers, the workers who are to lose their position by reason thereof shall be selected, either by lot or any other method agreed upon by the Association and the Union; however, should the Union and the Association disagree on the good faith of the reorganization or on the method of selecting the workers, the matter should be referred to the Impartial Tribunal without limitation as to the method of selection.

70. **Vigilance Committee.** It is mutually agreed upon the execution of this agreement a permanent joint committee shall be established for the purpose of observing the market before and after regular working hours of any day, Saturday, Sunday or Holidays, to ascertain if any shop is open or if any person is on the premises, and also for the purpose of ascertaining whether the hours and work day provisions of this agreement are being fully complied with. However, it is agreed that no more than two or any two of such committee shall investigate any one given shop.

71. **Committees Only to Report.** It is further understood that the duties of that committee shall be limited to observing and reporting to the Union and the Association whatever irregularities

they may find. Such committee members shall be furnished with a card properly signed by the Managers of the Association and the Union, identifying the purpose of their visit; upon presentation of such card to whomever is in charge of the shop, the committee shall be admitted to the workrooms for the purpose before mentioned.

72. **Courtesy Required.** It is further agreed that the members of the Association will extend all courtesies to the Vigilance Committee and that the Vigilance Committee will do likewise.

73. **Violators Subject to Penalties.** It is further agreed that members of the Association and members of the Union found by the Vigilance Committee violating the working hours as stipulated in this agreement, shall be subject to penalties by their respective organizations.

74. **All Notices in Writing.** It is further agreed between the parties hereto that wherever notice of one party to another is required to be given, that such notice shall be construed to mean notice in writing, delivered to the business office of the party notified.

75. **Private Deals Prohibited.** It is agreed by both parties that their members, that is, the members of the Association and the members of the Union, shall not enter into private agreement with one another as to wages, hours and working conditions, nor will such private agreements be sanctioned by either of the parties. However, should the Union or the Association find that a private deal was made by any member of the Union and a member of the Association, both parties shall be brought to trial before their respective organizations and if found guilty, punished. In no event shall this paragraph be construed that the worker or workers violating this paragraph should be deprived of tenure of employment unless the Union reaches such conclusion upon trial, or upon the decision of the Impartial Tribunal in the event the Association desires the discharge of such worker or workers.

76. **Modification of Agreement by Parties Only.** No member of the Association, no worker or group of workers shall have the right to modify this agreement or any provision thereof. Modifications of this agreement can only be effected at a conference called for such purpose by the parties and ratified by the respective organizations.

77. **Duration of Contract.** This contract shall terminate on February 28th, 1939. In the event that either of the parties shall desire a renewal thereof, or any changes or modifications in such renewal, it shall notify the other party at least sixty days prior to the expiration date thereof, whereupon the parties shall meet in conference within 10 days from receipt of such notice, for a consideration of such proposed changes or modifications.

IN WITNESS WHEREOF, the parties hereto have caused these Presents to be signed by their respective officers and their seals to be affixed, as of the First day of March, A. D. 1936.

CHICAGO ASSOCIATION OF DRESS MANUFACTURERS

By M. W. FRIED (Sgd.)
President

By ABRAHAM HELLER (Sgd.)
Executive Director

By ADOLPH H. HAAS (Sgd.)
Vice-President

INTERNATIONAL LADIES' GARMENT WORKERS UNION

By MORRIS BIALIS, (Sgd.)
Vice-President

CHICAGO JOINT BOARD OF LOCALS 5, 18, 59, 81 and 100

By LEONARD AXELROD (Sgd.)
Chairman

By M. A. GOLDSTEIN (Sgd.)
Secretary-Treasurer

LEWIS F. JACOBSON

Counsel for Chicago Association of
Dress Manufacturers

PETER SISSMAN

Counsel for Chicago Joint Board of
I. L. G. W. U.

[fol. 79]

Exhibit B.

Memorandum Contract entered into between the Associated Garment Industries and the International Ladies' Garment Workers' Union covering the Dress Industry in the Saint Louis Market.

Preamble

The Union and the Association have heretofore maintained contractual relations over a period of years. In that time nothing of consequence has occurred to mar the relationship. During the term of contract which has just expired it has not been necessary to refer a single dispute to arbitration. Thus have industrial peace been brought about and the tools of primitive adjustment been laid aside.

The Union and the Association, while proud of this progress, do not regard it as the ultimate objective of their relationship. The partnership relation between industry and the worker is not altogether a fiction. Through the introduction of efficiency and the elimination of ancient methods and wasteful processes it is quite possible to increase the income of the worker and expand the influence of the industry and the market simultaneously.

Under this document, then, our objective shall be the production of the finest products in the most efficient manner with the highest possible reward to the worker. To this end, by our signature hereto, we mutually pledge our co-operation and hereby covenant and agree this the eighth day of December, 1941, as follows:

I.

Definitions

(A) Association—shall mean the Associated Garment Industries of St. Louis, a corporation organized and existing under the laws of the State of Missouri.

(B) Union—shall mean the International Ladies' Garment Workers' Union, an unincorporated voluntary association of workers with headquarters in New York City

and shall embrace the St. Louis Joint Board thereof, the affiliated Locals in the St. Louis area, the several officers and members thereof individually and as a group.

(C) Workers — shall mean those members of the International Ladies' Garment Workers Union in good standing, engaged in productive work in the several shops who are members of the Association.

[fol. 80] (D) Coverage—The contract shall cover every shop of every member in good standing with the Association eligible to manufacture the merchandise herein covered which shall be ladies and misses dresses.

(E) "Low End"—shall mean dresses sold at wholesale for less than \$5.75 each. Special arrangements shall be maintained for the production of summer wear and sportswear as heretofore and as modified shall continue as an exception to the term hereof.

(F) Top Skilled Cutters—shall mean those cutters who shall have been certified by a special board of three (3) members of the Union and three (3) members of the Association as such. Said Board shall be a permanent Board and shall prescribe a series of tests which shall demonstrate the skill of the applicant for classification. Only such cutters as shall have been examined and certified by such board shall be eligible for this classification. All cutters who are at the execution hereof employed in the capacity of top skilled cutters and receive the wage scale therefore, are hereby classified and certified as such without test. A majority of the board shall be sufficient and necessary to classify, a copy of their certification shall be filed with the cutter, and Union and the Association.

(G) Inside Shop—shall mean the member of the Association who shall contract work out to a contractor on a cut make and trim basis.

(H) Outside Shop—shall mean a contractor who shall receive work and contract as provided in (G).

II.

Distribution of Work

There shall be an equitable distribution of work among all the workers of each department of a particular shop.

Work shall be apportioned and distributed in the most economical and efficient manner. Preparatory operations may also be employed but when so employed shall be equalized so far as possible with the regular workers in the department.

Both parties realize the necessity of improving production methods and machinery to the end of increasing production in the plant and resulting in reduction of overhead expenses and increased earnings to the workers. To establish a procedure resulting in such accomplishments, both parties agree as follows:

The Association agrees that its members will institute a [fol. 81] system whereby certain complicated parts of a garment may be produced separately. The dress and the separate parts of the dress will be produced by the operators employed by the company.

Workers will not be called in for less than one half days' work and if so called shall be compensated therefor at the regular minimum rate for their craft as herein prescribed. Workers on piece work shall also be paid at the regular minimum rate herein prescribed for their crafts for all time in excess of twenty minutes at any one time per day spent in the factory waiting for work.

Such time shall be certified to by a suitable person designated by the management at the time of such waiting period and shall be filed with the person in charge of time or payroll at the end of the day in which the waiting period occurred.

III.

Pay Day

Each employer shall establish a regular weekly payday and wages shall be paid by check or other agreeable medium on that day.

IV.

Price Committee

(A) There shall be a committee of the workers in each shop selected by the workers in the shop to negotiate and make prices on new garments and to act as the representative of the workers for collective bargaining. In case of a

disagreement on the prices the matter shall be taken up between the Union and the Association and a settlement reached, if possible, within twenty-four (24) hours after submission. The price set shall be fair and equitable and shall be based on the productive ability of the average worker.

(B) A system of timing garments instead of bargaining prices may be established in the shop. The timers are to be selected jointly by the price committee of the shop and the management.

(C) The first three (3) garments of a style should be timed.

(D) Each employer is to designate a specific day of the week to settle prices. No such settlement shall be prolonged more than one (1) week unless the time is extended by mutual consent. No settling of prices shall be done during [fol. 82] the regular hours of business.

(E) In the event an agreement cannot be reached between the Shop Committee and the management, a representative of the Union and the Association shall be called in to assist in the adjustment.

(F) In the event these parties cannot agree, the matter shall be referred to a committee of four (4) to meet and decide within three (3) days, two (2) to represent the Union and two (2) the Association. Meantime, the management shall pay the workers on a substantial rate and the prices finally agreed upon shall be retroactive.

(G) Prices agreed upon in any of the above instances shall be reduced to writing and signed by the parties making the agreement or adjustment.

V.

The Union, the Association, and the Joint Labor Board

The Association agrees that all workers employed in the shop of its members must be members of the Union in good standing, and must continue their good standing membership in the Union during the life of the contract. New workers and apprentices engaged by a member of the Association shall, after a trial period of four (4) weeks be-

come members of the Union. During the probationary period such workers shall secure a working permit from the Union, which permit the Union agrees to issue.

Since the continued growth of the St. Louis area as a garment market presents problems which are the parties mutual responsibility and which support the underlying wages and hour structure of this contract, the Union agrees that none of its members shall directly or indirectly work for any firm member not in good standing with the Association. Any firm who shall hereafter become a member of the Association shall remain a member of the Association in good standing for the life of this contract.

The Union and the Association shall designate and maintain a Joint Labor Board to be composed of three (3) members of the Union and three (3) members of the Association who shall in turn select a chairman and a secretary. The function of the board shall be to supervise the enforcement of this contract, to mediate disputes arising hereunder as elsewhere provided and to perform such other duties as are herein imposed upon it. It shall meet at such time and place as it shall decide unless otherwise required by the provisions hereof.

[fol. 83] The Association agrees not to discriminate against any worker for his or her legitimate activity on behalf of the Union. No such activity shall be carried on during the hours of business.

VII.

Discharge

No worker shall be discriminated against or discharged unjustly. It is not the meaning of this section to limit the management's right to discharge for just cause.

VIII.

Minimum Wage Scales

(A) The following shall be the wage scales for time workers of normal speed and ability.

| | |
|---------------------------|---------------------------------------|
| Top skilled cutters | \$40.00 |
| Second cutters | 33.00 |
| Finishers | \$16.75 high range; \$14.70 low range |
| Examiners | 14.70 |
| Drapers | 19.84 |
| Special Machine Operators | 16.75 |
| Bundlers | 14.70 |

The following rates shall be the basis for the computation of piece rates and piece workers and shall also be the basis for the computation for overtime pay for both piece workers and week workers.

| | |
|-----------|--------------------------------|
| Operators | 66½¢ per hour; 55½¢ low range. |
| Pressers | 84¢ per hour. |

(B) The present arrangements for subnormal producers as established shall continue.

(C) The pay for duplicates shall be based upon the average hourly earnings for the individual worker making the duplicates. The minimum wages for sample makers shall be \$23.50 per week.

(D) Being unable to agree on wage increases requested by the Union, the parties hereby mutually agree that immediately upon the execution hereof they, will submit that matter to the Board of Arbitration, composed of Tyrrell Williams, George A. Rozier, and and agree that the increases, if any, shall be determined by the Board of Arbitration not later than the 15th day of December, 1941 and shall be effective retroactive to December 8, 1941.

[fol. 84]

IX.

Scale Revision

It is the intention of the parties hereto to maintain the above wage scale. At the end of each year, however, the right is reserved to either party to submit to the Board of Arbitration evidence that there has been some material and substantial change in the economic conditions of the market as to warrant an adjustment. The Board of Arbitration in determining the issue shall be guided by the general economic conditions of this market, the economic conditions of the industry and the wage scales in the other

markets, the prevailing cost of living, the average skill of the workers with reference to the standard skill of the industry and competitive conditions.

X.

Shop Committee

The workers in each shop of the Association shall be represented by a shop committee consisting of not less than three (3) nor more than five (5). The chairman of this committee shall be the shop chairman.

The shop committee shall represent the workers in all matters or any grievances which may arise in a shop between a member of the Association and the workers. Any matter or grievance which cannot be speedily adjusted shall be taken up for settlement between an accredited representative of the Union and an accredited representative of the Association. All such negotiations between the employer and the shop committee shall be after working hours.

Either of the parties, the Union or the Association shall have a right to refer any unsettled dispute to the Board of Arbitration designated in this agreement.

XI.

Help.

(A) The Union shall maintain a labor bureau containing the names and addresses and skill and craft of each unemployed worker. When a manufacturer shall be in need of additional help, he shall notify said bureau so that it may direct these people to be opening. The power to select employees shall remain with the management. The manufacturer shall judge all applicants on their ability and if help is needed at once, in the order of their appearance. Preference shall be given to applicants with Union cards.

[fol. 85] (B) The Union agrees that it and its individual members shall cooperate to the fullest extent with the management in the training of new and unskilled workers. Conduct tending to discourage the engagement or training of such new or unskilled workers when such workers are necessary is prohibited.

(C) No shop is to employ semi-skilled cutters unless a full fledged cutter is first employed and every shop where no cutter is employed and there is reasonable ground for belief that one should be employed, the matter shall be taken up between the Union and the Association, and if no agreement is reached, the matter shall be referred to arbitration for final disposition, nor shall any employer or designer displace any cutter.

(D) No work shall be given out to workers to be made in the home.

XII.

Hours

(A) The hours of work under this contract shall be limited to thirty-five (35) hours per week, divided into five (5) working days. No work shall be done on Saturday or Sunday. No one shall be required to work on legal holidays.

(B) The members of the Association shall be given the privilege to make up the loss of time for legal holidays either on Saturday or during week days by making arrangements with a joint committee of the Association and the Union preceding the holidays. Such time shall be considered regular time.

(C) Overtime: There shall be a joint committee on overtime composed of two (2) representatives of each, the Union and the Association. When a member of the Association shall be in need of overtime, he shall apply to the Association, which shall refer the matter to the said joint committee. Upon approval by the said joint committee, the Association may grant the overtime requested.

XIII.

Industrial Peace

(A) This agreement provides for an orderly adjustment of differences and it is specifically stipulated by the parties hereto that there shall not be recognized any provocation for direct action. Strikes, stoppages and lock-outs are therefore prohibited. The Union undertakes the responsibility to see that this section is not vio-

lated and shall a stoppage occur, the Union will immediately order the workers to return to work.

(B) Since this agreement provides for an orderly adjustment and lockouts are prohibited, the Association undertakes the responsibility to see that this section is not violated and should a lockout occur, the Association will immediately order its members to return the workers to work.

(C) Persons violating this section shall be barred from the right of appealing to the protection of the balance of the contract, in the discretion of the Board of Arbitration. The Board of Arbitration is hereby authorized to, where in its judgment the matter warrants, inflict penalties on any who violate the two preceding sections in accordance with the gravity of the case. In cases of violation of said sections, the Board shall exercise injunctive relief upon application and prior to hearing on the merits of the dispute.

XIV.

Board of Arbitration

By unanimous agreement of parties to this agreement aforementioned, three (3) disinterested public-spirited citizens of known integrity and ability, shall upon their selection (within two (2) weeks after the signing of this agreement), and subscribing their hands hereto, become the Board of Arbitration under this contract.

(A) Theirs shall be the responsibility to:—

- (1) Interpret the provisions of this contract.
- (2) Enforce the provisions of this contract where amicable settlement as herein provided has failed.
- (3) Enjoin the violation where such violation is about to be entered into, or where it has begun.
- (4) Provide for common well being, promote harmony and insure industrial peace.
- (5) Impose damages and penalties where damages are shown to actually exist or where the aggravation of the offense makes such award advisable.
- (6) Revise scales as provided in Article IX.

(B) In the event of the death, resignation, refusal to serve or other incapacity of any member of this board, his position may be or may not be filled as the parties here-to see fit. If it is filled, it shall be done by the procedure prescribed for selection in the first instance.

[fol. 87] (C) Their tenure of office shall be for the life of this agreement.

(D) The Board may function through the office of one member above, but either the complainant or respondent shall have the right to be heard by the full board if he shall request it prior to the hearing of the first witness in the matter.

(E) The jurisdiction of the Board shall cover all the subject matter of this contract, but the attempts at adjustment between the Association and the Union, and its failure, and the filing of a written complaint shall be conditions precedent to the invoking of the jurisdiction of the Board and compliance with these conditions must be affirmatively pleaded in the complaint; except where strikes, stoppages or lockouts are involved when, this Board's jurisdiction shall be complete at once. The Board shall also have jurisdiction in the first instance in adjusting wage scales as provided in Article VIII, Section D.

(F) Replies to complaints need not be in writing or may be a simple general denial. But, if any defense, justification, or new matter is to be presented at the hearing, the nature of the defense, justification, or new matter must be reduced to writing and submitted to the complainant sufficiently in advance of the hearing so as to avoid surprise and enable them to prepare themselves.

(G) Where the complaints appear vague or trifling, the Board may upon request, or of its own motion, direct that it be made more specific before proceeding.

(H) All evidence submitted at the hearing must be kept within the definite points raised by the written complaint and reply. No outside matter may be pleaded unless agreed to by all parties including the Board.

(I) Costs to be borne equally by the parties.

4J) Only the parties to this agreement or their representatives shall be recognized by the Board of Arbitration for the purposes of submitting disputes or making complaints hereunder. In the event of disagreement between the Union and the Association over any of the terms of this contract and after compliance with the conditions precedent heretofore, either the Union or the Association shall have the right to submit the matter to the Board of Arbitration for adjudication.

[fol. 88]

XV.

Contractors

(A) No work shall be given to a contractor who is not bound by the terms of or is not observing the conditions of this contract.

(B) During the life of this contract no firm which is a member of the Association shall move or produce garments beyond the ten cent car fare zone of the City of St. Louis, Missouri.

(C) Each member of the Association shall register with the Joint Labor Board each contractor to whom he contemplates giving work. Such registration shall take place at the beginning of each season. No work shall be given by such member to any other contractor than those so registered unless and until both the employees of the member factory and those of the registered contractors are fully employed and application for such additional registration shall have been made to and approved by the said Joint Labor Board, by the member.

(D) In order to eliminate competition in setting piece rates in contracting shops, the Joint Labor Board is hereby empowered to set up an arrangement mutually satisfactory to the workers and management of the inside and contracting shop.

XVI.

Illegal Overtime

To enforce the provision hereof with particular reference to hours, the Labor Board composed of representatives of both the Union and the Association shall when necessary designate a committee of two (2) representing

each party hereto, who shall inspect conditions of illegal overtime in the factories and report their findings from time to time, and as directed by and to the said Labor Board.

XVII.

Security for Compliance

The Union agrees to make no individual contract with any firm eligible to be covered by the terms of this contract i.e., manufacturers of silk and wool dresses, in the St. Louis trade territory, without first requiring and having a cash indemnity bond or security first of \$500.00 posted in escrow to insure observance of the terms of this agreement to the end of eliminating a disadvantage to the firms who subscribe hereto, and agrees further to make no individual contract more favorable in any particular or generally than the terms hereof.

[fol. 89]

XVIII.

Finishers

An incentive system may be established in the finishing department of each shop whereby all workers in the finishing department may be given the opportunity to earn a wage based on their productive ability, but no skilled finisher of normal speed and ability shall be paid less than the minimum wage scale set forth for finishers.

XIX.

This Contract shall be in force from the date of the execution thereof, and shall remain operative and binding upon the parties thereto until November 30, 1945. This contract may be amended from time to time by additions agreed on by all parties concerned which shall be in the best interest of the St. Louis industry. This contract shall be considered ratified and continued in full force and effect for an additional year after the expiration date unless either party to it, being dissatisfied with it, shall so notify the other parties in writing thirty (30) days prior to its expiration date.

In Witness Whereof, the parties hereto have caused these presents to be signed by their respective representa-

tives and their seals to be affixed this 8th day of December, 1941.

**ASSOCIATED GARMENT
INDUSTRIES OF ST. LOUIS**

By.....

By.....

**INTERNATIONAL LADIES'
GARMENT WORKERS' UNION,**

By.....

BOARD OF ARBITRATION

.....
Chairman.

**ST. LOUIS JOINT BOARD,
I.L.G.W.U.**

By.....

[fol. 90] (Board's Exhibit 1-XXXXX.)

Date 9/8/42—Witness

Offer of Proof of Intervener, Donnelly Garment Workers'
Union.

United States of America,

Before the National Labor Relations Board

In the Matter of

Donnelly Garment Company

and

International Ladies' Garment Workers' Union

and

Donnelly Garment Workers' Union, Party to the Contract.

Because of the rulings of the trial examiner refusing to permit witnesses to testify and excluding all evidence with reference to matters occurring subsequent to July 15, 1939, and striking from the record testimony and evidence

with respect to matters occurring after that date, the intervenor, Donnelly Garment Workers' Union, offers to produce and examine under oath as witnesses herein the following named persons, viz.:

Mina Smith
Walter Higgins
Mary McClelland
Freeland Rife
Edith Williams
Jack McConaughey
Marjorie Green
Rose Todd
Bertha Estes
Nona Lowder
Lorraine Smith
Edith Koll
Rada Walker

Dale Berryhill
Johana Hunter
Mary Sneden
Earl Willoughby
Fred Ellis
Paul Oliver
Avis Mowry
Gertrude Gassert
Leslie Ward
Al Staab
Della Harrison
Lillian Lubben
Mildred Smar

and offers to prove that if such witnesses were sworn and examined they would testify in substance as follows:

That continuously from its organization on April 27, 1937, to July 15, 1939, and from July 15, 1939, down to the present date, Donnelly Garment Workers' Union, intervenor herein, has been continuously maintained and administered by its members and the officers thereof duly elected by its members as a bona fide labor union and as the bargaining agent of all of the employees of Donnelly Garment Company and Donnelly Garment Sales Company eligible to membership in said union; that during said period all of the eligible employees of Donnelly Garment Company have continuously belonged to said union and that their membership therein has been voluntary and that it represents their free-will choice of a bargaining agent; that Donnelly Garment Workers' Union has held regular and frequent meetings, that attendance at such meetings was voluntary and without penalty for non-attendance, and that attendance has been uniformly large, and that participation in the affairs of the union conducted at such meetings has been freely engaged in by all of its members.

Intervenor offers to prove that at stated periods in accordance with the duly adopted by-laws of said inter-

vener union a board of committee chairmen or executive committee of said union has been elected from the membership by vote of the entire membership and that such committees have been as follows:

1939

Rose Todd
 Mina Smith
 Marjorie Green
 Jack McConaughey
 Walter Higgins
 Mary McClelland
 Bessie Weilert
 Freeland Rife
 Edith Williams

1940

Rose Todd
 Bertha Estes
 Jack McConaughey
 Freeland Rife
 Walter Higgins
 Nona Lowder
 Lorraine Smith
 Edith Koll
 Rada Walker

[fol. 92] 1941

Lorraine Smith
 Avis Mowry
 Jack McConaughey
 Paul Oliver
 Fred Ellis
 Earl Willoughby
 Mary Sneden
 Johana Hunter
 Dale Berryhill
 Edith Koll

1942

Lorraine Smith
 Gertrude Gassert
 Fred Ellis

Leslie Ward
 Edith Koll
 Al Staab
 Della Harrison
 Lillian Lubben
 Mildred Smar

Intervener offers to prove that in addition to the general union meetings the board of committee chairmen has held regular and frequent meetings for the purpose of conducting the business affairs of the union and that throughout the entire period the respective committees have continuously dealt with Donnelly Garment Company in bona fide negotiations and at arm's length with respect to wages, hours and working conditions and have genuinely represented the interests of the employees of Donnelly Garment Company as members of Donnelly Garment Workers' Union in their dealings with Donnelly Garment Company; that each of said committees during its period of incumbency has handled and presented to the company grievances and complaints of individual members of Donnelly Garment Workers' Union with respect to rates of pay, hours and working conditions and on behalf of such employees has secured adjustments of such disputes and grievances.

Intervener offers to prove that during such period it has negotiated for the renewal, extension, modification and continuation of its working agreement and bargaining contract with Donnelly Garment Company and has successfully [fol. 93] kept such contracts in full force and effect; that in the latter part of 1941 or early part of 1942 the duly elected committee of Donnelly Garment Workers' Union negotiated with the company with respect to a general increase of wages of the employees and after genuine bona fide negotiations secured for all of its members, except a few who had shortly theretofore received substantial increases, increases in pay of not less than seven and one-half per cent; that in May, 1942, the company by its interpretation of the wage contract between it and Donnelly Garment Workers' Union took the position that since May 30th and July 4th fell on Saturday that the company was not obliged to give such holidays to the employees with full pay and that the interpretation of such contract by Donnelly Garment Workers' Union required that the em-

ployees be given holidays on such dates and that full pay be given therefor even though such dates came on Saturday; that after genuine negotiations over such dispute the Donnelly Garment Workers' Union prevailed with the result that several thousands of dollars were paid to the employees by the company despite the contrary view of the company.

Intervener offers to prove that during said period Donnelly Garment Workers' Union has been completely self-supporting and has collected from its members such dues as were required for its union purposes and that the check-off method of collecting dues had the support and authorization of every member of said union and that the union has fully accounted for all of such sums collected and that it has received no financial or other support from the respondent.

Intervener offers to prove that during all of said period the membership of Donnelly Garment Workers' Union has consisted only of employees below the rank of those having authority to hire, fire or discipline or to represent the management in any supervisory or confidential capacity; that in late 1941 when changes in company policies of management made it questionable whether certain specified employees and classes of employees because of increased responsibilities given to such employees could thereafter properly belong to Donnelly Garment Workers' Union, all such employees were requested by Donnelly Garment Workers' Union to resign therefrom and that such employees did resign and have had no further connection with Donnelly Garment Workers' Union.

Intervener offers to prove that during the period from July 15, 1939 to date, all members of Donnelly Garment Workers' Union have maintained and administered their union in good faith and of their own free will and as their representative and bargaining agent, and that during such period they have not been dominated, coerced or intimidated by respondent or anyone authorized to represent or representing respondent into belonging to or maintaining Donnelly Garment Workers' Union or into staying out

of any other labor organization, and that they know of no instances of coercion, domination or intimidation on the part of the respondent or anyone acting or speaking for the respondent, and that in addition to those persons specifically named above by which said matters are offered to be proved the intervener offers to call all of its members as witnesses and to prove by them the matters set out in this paragraph.

FRANK E. TYLER,
LUCIAN LANE,
GOSSETT, ELLIS, DIETRICH &
TYLER,
Attorneys for Intervener, Donnelly
Garment Workers' Union.

[fol. 95]

Board's Exhibit 1-YYYYY.

9/14/42—Witness

(Stipulation as to Mrs. Reed's Further Testimony.)

United States of America
Before the National Labor Relations Board
Seventeenth Region

In the Matter of

Donnelly Garment Company
and

International Ladies' Garment Workers' Union
and

Donnelly Garment Workers' Union, Party to the Contract.

Case No. C-1382.

Whereas, Mrs. James A. Reed (Nell Quinlan Reed) was called to Michigan on September 3, 1942, on account of the serious illness of David Quinlan Reed, her son, and for that reason is unable to return to Kansas City at this time:

It is hereby stipulated that she would, if she were available, testify on redirect examination as follows, and that same may be received and considered as her testimony, to-wit:

That in her answers made in response to Mr. Langsdale's cross-examination with reference to Board's Exhibit 31-A, beginning near the bottom of page 3860 and on pages 3861 to 3865 inclusive of the transcript, she was referring to and had in mind the date June 1, 1935, instead of June 1, 1937, and was under the impression that said exhibit bore the date of June 1, 1935, as will appear from her answers to questions appearing on pages 3886 and 3887 of the transcript.

That she would further testify that after June, 1935, when Mr. Baty was given charge of the factory, and up to July 15, 1939, that Lena Tyhurst was not assistant factory [fol. 96] manager, that Marvin Price was not the head mechanic, that Ortense Root was not the sample department head, that Anna Price was not the shipping clerk head, and that none of said persons had any supervisory authority during said period; that neither she nor the Company ever authorized or gave them those titles and that they did not hold such positions on June 1, 1937, or between June, 1935 and July 15, 1939.

Dated this 14th day of September, 1942.

JAMES A. REED,

ROBT. J. INGRAHAM,

WILLIAM S. HOGSETT,

Attorneys for Respondent.

FRANK E. TYLER,

LUCIAN LANE,

Attorneys for Intervener,
Donnelly Garment Workers' Union.

RUTH WEYAND,

Attorney for National Labor
Relations Board.

.....
Attorney for I. L.-G. W. U.

[fol. 97]

(Board's Exhibit 1-ZZZZZ.)

Date 9/17/42—Witness

Joinder by Intervener, Donnelly Garment Workers' Union,
With Respondent's Motion for Designation of Dif-
ferent Trial Examiner and Affidavit of Prejudice
and Respondent's Application for Continuance.

United States of America

Before the National Labor Relations Board,

In the Matter of

Donnelly Garment Company

and

International Ladies' Garment Workers' Union

and

Donnelly Garment Workers' Union, Party to the Contract.

Case No. C-4382.

Intervener, Donnelly Garment Workers' Union, by oral statement in the record on July 8, 1942, at page 3139 thereof, having joined with the respondent in its motion for the designation of a different Trial Examiner and having then adopted the Affidavit of prejudice filed by respondent in support of such motion, now by written pleading adopts said motion and affidavit, Board's Exhibit 1-CCCCC, and joins with respondent therein.

Intervener, Donnelly Garment Workers' Union, having orally adopted and joined in respondent's application for continuance Board's Exhibit 1-EEEEEE filed with the National Labor Relations Board on or about July 16, 1942, now by written pleading adopts and joins in said application for continuance.

FRANK E. TYLER,
LUCIAN LANE,

Attorneys for Intervener, Donnelly
Garment Workers' Union.

[fol. 155] (Intermediate Report of Trial Examiner,
November 27, 1942.)

United States of America
Before the National Labor Relations Board
Trial Examining Division
Washington, D. C.

In the Matter of

Donnelly Garment Company

and

International Ladies' Garment Workers' Union

and

Donnelly Garment Workers Union, party to a contract.

Case No. C-1382.

Miss Ruth Weyand, Miss Helen F. Humphrey, and Miss
Fanny Boyls, for the Board.

Reed and Ingraham, by Mr. James A. Reed, Mr. R. J.
Ingraham, Mr. James J. Shepard, Jr. and Mr. Burr S.
Stottle, of Kansas City, Mo., for the respondent.

Hogsett, Trippe, Depping and Houts, by Mr. William
S. Hogsett, of Kansas City, Mo., for the respondent.

Mr. Clif Langsdale, Mr. Charles Turney, and Miss Jane
W. Palmer, of Kansas City, Mo., for International Ladies'
Garment Workers' Union.

Gossett, Ellis, Dietrich and Tyler, by Mr. Frank E. Tyler,
Mr. Lucian Lane, and Mr. Raymond E. Draper, of Kansas
City, Mo., for the Donnelly Garment Workers Union.

Statement of the Case.

Upon an amended charge duly filed by International
Ladies' Garment Workers' Union, herein called the
I. L. G. W. U., the National Labor Relations Board, herein
called the Board, by its Acting Regional Director for the
Seventeenth Region (Kansas City, Missouri), issued its
complaint dated April 27, 1939, against Donnelly Garment
Company, of Kansas City, Missouri, herein called the re-
spondent, alleging that the respondent had engaged in and
was engaging in unfair labor practices affecting commerce.

within the meaning of Section 8 (1), (2), and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. A copy of the complaint and amended charge, accompanied by notice of hearing, were duly served upon the respondent, the I. L. G. W. U. and the Donnelly Garment Workers Union, herein called the D. G. W. U., party to the contract.

[fol. 156] On May 2, 1939, the D. G. W. U. filed its petition to intervene, which was granted insofar as its interest might appear, by order of the Acting Regional Director for the Seventeenth Region.

Pursuant to notice, a hearing was held on June 5 to July 15, 1939, inclusive at Kansas City, Missouri, before the undersigned, the Trial Examiner duly designated by the Board. The Board, the respondent, the I. L. G. W. U. and the D. G. W. U. were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties.

With respect to the unfair labor practices, the complaint as amended, without objection, at the close of the Board's case alleged in substance: that the respondent (1) on or about April 27, 1939, and thereafter dominated and interfered with the formation and administration of a labor organization among its employees known as Donnelly Garment Workers Union and has given financial and other support to said organization, inter alia, (a) by encouraging and permitting its supervisory and other employees to promote the organization of and membership in the D. G. W. U. on the respondent's time, property, and at its expense; (b) by forming on or about February 12, 1935, through its officers and agents, the Donnelly Loyalty League, herein called the League, by continuing to dominate the League until on or about April 27, 1937, for the purpose of impeding and preventing the organization of the employees by the I. L. G. W. U.; (c) by creating on or about April 27, 1937, through its officers and agents, the D. G. W. U. as a continuation of the League; (d) by entering into a closed-shop agreement for the purpose of assisting the D. G. W. U. and of depriving the employees of the rights guaranteed them under the Act; (2) discouraged

membership in the I. L. G. W. U. by discharging Sylvia Hull and May Fike in April 1937 because they had joined and assisted the I. L. G. W. U.; and (3) by various acts¹ has coerced and restrained the employees from becoming members or continuing membership in the I. L. G. W. U. and has encouraged and compelled membership in the D. G. W. U. The amended complaint further alleged that the respondent by entering into a closed-shop contract with the D. G. W. U. has violated Section 8 (3) and 8 (1) of the Act and that the closed-shop contract between the respondent and the D. G. W. U. is void and of no effect.

At the opening of the hearing the respondent and the D. G. W. U. filed motions to make the charge and the complaint more definite and certain. The undersigned granted the motions in part and requested counsel for the Board to make the complaint more definite and certain in specified respects. Counsel for the Board, in compliance with this request, thereafter moved to strike certain portions of the complaint and amend it, which motion was granted. At the close of the presentation of evidence by the Board in support of the complaint, the complaint was without objection again amended on motion of counsel for the Board. Service of the amended complaint was acknowledged by the parties. The undersigned denied various other motions by the respondent and the D. G. W. U. to make the complaint more definite and certain, and the respondent's contention that portions of the amended complaint was so vague, indefinite, and uncertain that they did not sufficiently appraise the respondent of the acts charged was overruled by the undersigned.

¹The principal acts enumerated in the amended complaint are: (a) by discharging Fern Sigler in April 1937, (b) by statements of the respondent's president and certain supervisory employees in March and April 1937, (c) by a public statement against the I.L.G.W.U. made by James A. Reed, (d) by permitting a loud speaker system in its cafeteria to be used as a medium of propaganda in favor of the D.G.W.U. and in opposition to the I.L.G.W.U., (e) by keeping members and meetings of the I.L.G.W.U. under surveillance, (f) by circulating and inducing the employees to sign a petition professing their loyalty to the respondent, (g) by permitting certain supervisory and confidential employees to become members and active in the affairs of the D.G.W.U., (h) by discriminating in the allotment of work and by refusing to recall to work certain named employees who were allegedly members of the I.L.G.W.U., (i) by instigating and permitting the employees to engage in a demonstration on April 23, 1937, against certain members of the I.L.G.W.U., and (j) by granting a contract to the D.G.W.U. making membership therein a condition of employment.

During the course of the hearing, the respondent and the D. G. W. U. made several motions to dismiss the amended complaint and specific portions thereof. Decision on the motions having been reserved the motions for dismissal of the amended complaint in its entirety are hereby denied and the motions to dismiss certain paragraphs of the amended complaint, relating to certain of the acts of interference, restraint, and coercion² are hereby granted. The motions in all other respects are denied.

The respondent's answer was divided into four parts: In Part A the respondent contended that upon 10 stated ground³ the Board is without jurisdiction to maintain the proceedings. In Part B, the respondent avers that the [fol. 158] complaint must be dismissed "for the reason that the Board, its agents, and representatives have exceeded their authority and have demonstrated their bias and prejudice against the respondent, and collusion with the International Union (I. L. G. W. U.) by filing of the

²The portions of the amended complaint dismissed were sub-paragraph d,g,g(1),i,k,n, and p of paragraph 11 relating to: (1) public statements of James A. Reed; (2) statements of Alex Green and Ella Mae Hyde, supervisory officials of the respondent, concerning the I.L.G.W.U.; (3) use of a loud speaker system in the respondent's cafeteria to influence its employees regarding their union affiliations; (4) surveillance; (5) discrimination in the allotment of work to employees who were members of the I.L.G.W.U.; and (6) the refusal of the respondent to recall or assign work to certain named employees who were members of the I.L.G.W.U.

³The stated grounds were: (1) the Board is without jurisdiction to issue a complaint "at the request of an organization which does not represent a single employee in the respondent's plant. . . and [which] has been found by the United States Federal Court to be engaged in an unlawful conspiracy to force the respondent to compel its employees to join said organization against their wills"; (2) the Board has no authority to issue a complaint "for the purpose of attempting to abrogate and nullify contracts between the respondent and the exclusive representative of 100 percent of its employees, when said contracts are entirely satisfactory to both parties thereto and have been determined by a United States Federal Court to contain higher wages and more favorable working conditions than are contained in any contracts entered into between the International Union (I.L.G.W.U.) and other garment manufacturers in this part of the country"; (3) this proceeding deprives the respondent, without a judicial hearing, of its right freely to contract as guaranteed by the Fifth Amendment to the Constitution of the United States; (4) if this proceeding were sustained, valid contracts between the respondent and the chosen representatives of its employees would be abrogated without a judicial hearing, due process of law, and a trial by jury in violation of the Fifth and Seventh amendment of the Constitution; (5) this proceeding deprives the respondent of its property without due process of law and of its right to trial by jury by providing for the awarding of unearned wages to former employees and for their reinstatement; (6) the amended charge of the I.L.G.W.U. is vague, indefinite, and does not state facts sufficient to support a formal complaint; (7) the Board,

complaint herein and by the maintenance of this proceeding in the face of [certain enumerated] facts of which the Board and its representatives have actual knowledge." Part C is a petition for investigation and certification of representatives of its employees. The answer in Part D admits certain allegations of the complaint concerning the corporate structure and the nature of the business of the respondent, but denies specifically every allegation that it has engaged in or is engaging in unfair labor practices.

[fol. 159] During the hearing, the respondent filed a motion requesting that the complaint be dismissed for the

without authority, by the issuance of its complaint has prejudged as true the allegations in the amended charge of the I.L.G.W.U.; (8) the complaint is vague, indefinite, insufficient and alleges conclusions instead of facts; all in violation of due process of law; (9) the maintenance of this proceeding violates the Fifth amendment in Article III, Section 1, and 2 of the Constitution of the United States by permitting the Board to act as investigator, complainant, prosecutor, triers of facts, and judge of the controversy and by denying the respondent a judicial review of the evidence in accordance with the rules of law and evidence; and (10) the Board has not conducted an election among the respondent's employees to determine their choice of representatives, which is a condition precedent to a proceeding based on charges of unfair labor practices.

"The answer of the respondent alleges as facts of which the Board has knowledge: (1) that the I.L.G.W.U. has engaged in an unlawful conspiracy to injure and destroy the respondent's business by publishing false and libelous reports about the respondent and the working conditions in its plant, by inaugurating and threatening to inaugurate secondary boycotts against the respondent's customers and merchandise, by threatening assaults on the respondent's employees similar to those perpetrated against employees of garment manufacturers in Kansas City, Missouri, St. Louis, Missouri, Dallas, Texas, and Memphis, Tennessee; (2) that the I.L.G.W.U., knowing that the employees had refused to be represented by the I.L.G.W.U., publicly announced a drive against the respondent and the employees, requested by letter, containing false statements a conference with the respondent for the purpose of making a closed shop contract, and began attacks of fraud and violence against three other garment manufacturing companies in Kansas City, Missouri, at the same time announcing that similar acts of violence would be perpetrated against the respondent's employees; (3) the respondent, after receiving a request to enter into a collective bargaining agreement with the D.G.W.U., a voluntary organization of employees, sought to obtain a determination by the Board of the right of the D.G.W.U. to be exclusive bargaining agent of the employees but was advised by representatives of the Board that an application by an employer for certification of representatives could not be granted under the rules of the Board, and therefore, entered into a collective bargaining agreement with the D.G.W.U.; (4) that sometime after July 5, 1937, the United States District Court for the Western Division of the West in District of Missouri, three judges sitting, temporarily enjoined the I.L.G.W.U. from committing unlawful acts of fraud and violence against the respondent and the employees, which decision was appealed to the Supreme Court of the United States and by that Court remanded to be heard before a single judge in the District Court; (5) that the Board's Acting Regional Director for the Seventeenth Region, (Earnest P. Dunbar), on August 25, 1938, notified the respondent by letter that

reasons stated in Part A and B of its answer.⁵ The I. L. G. W. U. moved to strike certain portions⁶ of the respondent's answer.

charges of unfair labor practices have been filed against the respondent by the I.L.G.W.U. and requested a conference on the charges, and thereafter the respondent requested the Acting Regional Director for the facts alleged in the charges and for an opportunity to present evidence thereon, but this privilege was denied by the representatives of the Board who threatened to file a complaint and conduct a long hearing unless the respondent acceded to the demands of the I.L.G.W.U. and further asserted that if a hearing was held the Board would find against the respondent; (6) at on or about February 4, 1939, at the request of representatives of the Board, written proposals upon which settlement of the charges might be reached were submitted to each other by the respondent, the D.G.W.U. and I.L.G.W.U. and that the proposal of the I.L.G.W.U. included an offer to drop all boycott activities against the respondent "so long as the respondent does not recognize any plant union as the bargaining representatives of its employees", acceptance of which proposal by the respondent would have compelled it to violate the terms of the National Labor Relations Act; and (7) that the hearing on the remanded injunction suit was begun in the United States District Court on March 22, 1939, at the close of which a permanent injunction against the I.L.G.W.U. was granted, pursuant to respondent's petition, and that representatives of the Board were in constant attendance at the hearing and consulted frequently with representatives of the I.L.G.W.U. during examination of respondent's witnesses, thus demonstrating that the Board assisted and is assisting the I.L.G.W.U. in its conspiracy against the respondent and is maintaining the proceedings herein, in violation of any authority vested in the Board by the Act.

Part B of the respondent's answer included the findings of fact and conclusions of law of the United States District Court for the Western Division of the Western District of Missouri (Donnelly Garment Company et al. v. I.L.G.W.U. et al., D.G.W.U. Intervener's Case No. 2924) in an injunction suit brought by the respondent against the I.L.G.W.U. As a part of these findings of fact and conclusions of law, the District Court found that the respondent's employees acting unanimously had voluntarily formed the D.G.W.U. and at all times freely administered and maintained it. This finding of fact is not binding upon the Board and does not preclude an independent finding by the Board on this issue. Section 10 (a) of the Act provides:

The Board is empowered . . . to prevent any person from engaging in any unfair labor practice (listed in Section 8) affecting commerce. This power shall be exclusive and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise. [emphasis added]

Matter of National Electric Products Corp. and United Electrical and Radio Workers of America, Local No. 609, 3 N.L.R.B. 475, 500. See also Union Premier Food Stores, Inc. v. Retail Food Clerks and Managers Union, Local No. 1357 et al., 98 F.(2d) 821 (C.C.A. 3) where it was held that the District Court was without authority to conduct an election to determine the exclusive bargaining representative of certain employees since the Act vests power to determine that question exclusively in the Board. Cf. Blankenship v. Kirby, 96 F.(2d) 459 (C.C.A. 7); International Brotherhood of Teamsters v. International Union, 106 F.(2d) 871 (C.C.A. 9).

⁵From Part A of the respondent's answer the allegation that a United States District Court had determined that the contracts between the respondent and the D.G.W.U. contain higher wages and more favorable working conditions than contracts between the I.L.G.W.U. and other garment

[fol. 160] The undersigned took these motions under advisement and requested the respondent to submit a written statement of the evidence it would offer, to prove the averments set forth in Part A and B of the answer, and any other parts of the answer referred to in the motion to strike. The respondent submitted no statement of evidence in support of Part A of its answer except as to the paragraph relating to wages and working conditions provided for in contracts entered into between the I. L. G. W. U. and other garment manufacturers. In Part B of the answer the respondent submitted certain parts of the transcript of testimony taken in an N. R. A. hearing, in which it was also the respondent and the I. L. G. W. U. the charging Union and in the United States District Court injunction suit between the respondent and the I. L. G. W. U. The undersigned refused the proffered evidence, granted the motion of the I. L. G. W. U. to strike, denied the request of the respondent for dismissal of the complaint based on Part A of the answer, and refused to receive the respondent's petition for investigation and certification of representatives as set forth in Part C of its answer.⁷

manufacturers in the area; from Part B of the answer the allegations that the I. L. G. W. U. was engaging in an unlawful conspiracy against the respondent, that it had engaged in violence against employees of other garment manufacturers and had announced that similar acts would be perpetrated against employees of the respondent, that the respondent's contract provided for higher wages, more favorable working conditions than contracts obtained by the efforts of the I. L. G. W. U., the allegations referring to the findings and decrees of the United States District Court for the Western Division of the Western District of Missouri, the averment that the I. L. G. W. U. admitted that the respondent's employees did not desire to be represented by the I. L. G. W. U., the allegations regarding the assistance of the Board's representatives in the alleged conspiracy of the I. L. G. W. U. against the respondent; from Part D the averments that the I. L. G. W. U. sought closed-shop agreements even when it represented only a few or none of the employees of the company with whom it sought such agreements. The reasons stated as grounds for striking these portions of the answer are that they are immaterial to the issues before the Board, that the Board is not bound by the findings of other judicial tribunals, that the "clean hands" doctrine of equity does not apply to proceedings before the Board, that these portions of the answer constitute an attempt by the respondent to try before the Board the Federal District Court injunction suit between the respondent and the I. L. G. W. U., and that under the Act the Board is not empowered to take cognizance of alleged law violation, coercion, or intimidation on the part of the complaining union.

⁷Donnelly Garment Company v. N. R. A., 123 F. (2d) 215, 221, 225, (C.C.A. 8) where the Court stated:

The main and controlling issue in the case was whether the formation or administration of the Donnelly Garment Workers Union had been supported, dominated, or interfered with by the Company or whether

Prior to the commencement of the hearing, the D.G.W.U. filed a motion requesting that the Board conduct an election among the respondent's employees to determine whether they desired to be represented by the D. G. W. U. or by the I. L. G. W. U., and that the hearing be postponed until the outcome of such election had been announced. Thereafter, on May 17 and June 3, 1939, the D. G. W. U. filed a petition and amended petition, respectively for investigation and certification for representatives. At the hearing the undersigned denied the motion and rejected the petitions. The D. G. W. U. also filed an answer denying all the allegations relating to the unfair labor practices of the respondent, but admitting the existence of a closed-shop agreement between the respondent and the D. G. W. U.

[fol. 161] At the conclusion of the hearing the parties were afforded an opportunity to argue orally before the undersigned, and were requested to file memorandum briefs. Memorandum briefs were filed by the respondent, the I. L. G. W. U., and the D. G. W. U.*

On October 11, 1939, the undersigned filed an Intermediate Report, finding that the respondent⁴ had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1), (2), and (3),⁵ and Section 2 (6) and (7) of the Act. The undersigned further found that May Fike had not been discriminatorily discharged, and recommended inter alia that the respondent cease and desist from the unfair labor practices which it was found to have engaged in, withdraw all recognition

that union was a bonafide independent labor organization formed and administered exclusively by the employees of the Company and completely free from employer influence, domination and support.

We are of the opinion that the Trial Examiner did not err in confining the issues to those which were tendered by the complaint filed by the Board. We are satisfied that the Board was not required to try the International for conspiracy or to try the charge that the Board had conspired or colluded with the International.

*By stipulation, dated July 22, 1939, the amended complaint was further amended to conform it to the proof.

⁵The undersigned found that the discharge of Sylvia Hull was discriminatory within the meaning of the Act but did not recommend reinstatement or back pay for reasons discussed in Section E, infra.

and completely disestablish the Donnelly Garment Workers Union as the representative of the employees for the purposes of collective bargaining, cease and desist from giving effect to its contract and check-off agreement with the Donnelly Garment Workers Union, and that the allegations of the complaint as to May Fike be dismissed.

On October 12, 1939, the case was transferred from the Regional Office of the Seventeenth Region to the Board in Washington, D. C. and continued before the Board pursuant to Article II, Section 32, of the National Labor Relations Board Rules and Regulations—Series 2.

On December 1, 1939, the respondent, the D. G. W. U., and the I. L. G. W. U. filed exceptions to the Intermediate Report. The same parties filed briefs in support of their exceptions to the Intermediate Report. On January 9, 1940, a hearing for the purpose of oral argument was conducted before the Board in Washington, D. C., at which the respondent, the D. G. W. U., and I. L. G. W. U. appeared by counsel, who participated in the argument.

On March 6, 1940, the Board after consideration of the exceptions to the Intermediate Report, and the briefs submitted in support of the exceptions, issued its decision, containing its finds of fact, conclusions of law, and order.¹⁰ In brief, the Board found that the respondent had dominated and interfered with the formation and administration of the D. G. W. U. and had contributed support to it in violation of Section 8 (2) of the Act; had discharged May Fike and Sylvia Hull in violation of Section 8 (3) of the Act; and had by these and other Acts interfered with, restrained, and coerced its employees in violation of Section 8 (1) of the Act.

Thereafter the respondent, Donnelly Garment Company, filed with the United States Circuit Court of Appeals for the Eighth Circuit a petition to review and set aside the Board's order, to which the Board filed an answer requesting the enforcement of its order. The D. G. W. U. filed an intervening petition requesting that the Board's order be set aside, and the I. L. G. W. U. intervened in defense of the order. The petitioners, Donnelly Garment Company;

¹⁰21 N.L.R.B. 164.

and D. G. W. U. challenged the validity of the Board's [fol. 162] order on two grounds: (1) lack of due process; and (2) lack of sufficient evidentiary basis for the Board's findings, conclusions, and order. The Circuit Court, on November 6, 1941, after consideration of briefs and arguments of counsel for the respective parties handed down its decision remanding the case to the Board for further proceedings.¹¹

On April 21, 1942, the Board entered an order vacating and setting aside its Decision and Order dated March 6, 1940, reopening the record for a further hearing to take additional evidence in accordance with the Opinion and Decree of the Circuit Court, referring the proceeding to the Regional Director for the Seventeenth Region for the purpose of conducting the further hearing, and authorizing and directing the Regional Director to issue notices of the further hearing. On June 6, 1942, the Regional Director issued his notice of further hearing to the parties, notifying them that on July 6, 1942, at Kansas City, Missouri, a further hearing would be conducted.

Pursuant to such notice, a hearing was held on July 6, 7, and 8, 1942, and on various days between August 3 and September 17, 1942, inclusive at Kansas City, Missouri, before the undersigned, the Trial Examiner duly designated by the Chief Trial Examiner. The Board, the respondent, the D. G. W. U., and the I. L. G. W. U. were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all of the parties.

On July 8, 1942, prior to the taking of any testimony in the further hearing, respondent filed with the undersigned

¹¹Donnelly Garment Company v. N.L.R.B., 123 (2d) 215, 225 (C.C.A. 8) where the Court stated:

We think that the least the Board can do in order to cure the defects in its procedure caused by the failure of the Trial Examiner to receive admissible evidence, is to vacate the order and the findings and conclusions upon which it is based; to accord to the petitioners [the respondent and D.G.W.U.] an opportunity to introduce all of the competent and material evidence which was rejected by the Trial Examiner; and to receive and consider such evidence together with all other competent and material evidence in the record before making new findings and a new order.

its Affidavit of Prejudice for the purpose of obtaining the designation of another Trial Examiner. The D. G. W. U. concurred in the application. The undersigned referred the matter to the Board, and continued the hearing subject to 48 hours' notice to the parties. On July 17, 1942, the respondent filed with the Board an Application for a Continuance of the further hearing. On July 28, 1942, after consideration of the oral argument by the respondent, the I. L. G. W. U., and the D. G. W. U. before the Board, and related documents filed by the parties, the Board issued its order dated July 28, 1942, dismissing the Affidavit of Prejudice¹² and denying the Application for a Continuance.¹³ On July 30, 1942, the undersigned notified the parties [fol. 163] that the hearing would reconvene on August 3, 1942, at Kansas City, Missouri.

¹²The Board in its order dismissing the Affidavit of Prejudice, stated:

Each of the particulars relied on in the Affidavit of Prejudice were brought by the respondent to the attention of the Circuit Court of Appeals. The Court decided that the Trial Examiner and the Board has been free of any bias or prejudice. (See *Donnelly Garment Company v. N.L.R.B.*, 123 F.(2d) 215 (C.C.A. 8))

Having carefully examined the matters now adduced by the respondent, we can see no reasons for disagreeing with the findings of the Circuit Court of Appeals or for doubting that the evidence ordered by that Court, to be admitted will be fairly and judiciously received and considered. Indeed, to disqualify the Trial Examiner for his previous error would be equivalent to barring a trial judge who had been overruled on a question of evidence by an Appellate Court, from presiding over the further hearing; such is not the customary practice. See *Berger v. United States*, 225 U.S. 22, 31; *Minnesota and Ontario Paper Co. v. Molyneux*, 70 F.(2d) 545, 547, (C.C.A. 8).

¹³The Board in its order denying the Application for Continuance stated:

Respondent's Application for Continuance asserts that the hearing should be postponed to a date not earlier than December 23, 1942, for the reason that it is engaged in war production and that the employees it expects to call will not be available as witnesses without serious interference with such production. The need for the application of the principles of the Act to industry is even greater in time of war than in peace-time, while the abandonment or postponement of the Act's guarantees might well create the tensions that have in the past led to industrial discontent, disturbance, and unrest, with consequent impairment of efficiency and production.

We believe that the Trial Examiner is in the best position to make provision regarding the availability of particular witnesses and we hereby instruct him that, in so doing, he give every consideration to the desirability of causing as little hindrance as possible to the respondent's production.

The undersigned during the course of the further hearing, received no request from the respondent for a continuance, a change in the hours or place of the hearing to accommodate witnesses engaged in war production activities.

The undersigned accorded the respondent and the D.G.W.U. an opportunity to introduce all of the competent and material evidence which was rejected at the prior hearing ¹⁴ and permitted Nell Quinlan Reed, the respondent's president, who was, because of a serious illness, prevented from testifying at the hearing of 1939, to testify in the further hearing upon all the issues set forth in the pleadings.

On September 25, 1942, the Board vacated and set aside the Intermediate Report of the undersigned, heretofore issued under date of October 11, 1939, and ordered the undersigned to issue an Intermediate Report on the entire record.

Upon the record thus made and from his observation of the witnesses, the undersigned makes in addition to the foregoing, the following:

Findings of Fact.

I. The Business of the Respondent.

The respondent, Donnelly Garment Company, is a Missouri Corporation, having its office and factory in Kansas City, Missouri, where it is engaged in the business of designing, manufacturing, selling, and distributing ladies' garments under the trade name of "Nellie Donnelly". More

¹⁴The United States Circuit Court of Appeals for the Eighth Circuit, (Donnelly Garment Company v. N.L.R.B., 123 F.(2d) 215, 222 (C.C.A. 8) in remanding the case for the purpose of adducing additional evidence, rejected at the hearing before the Trial Examiner (in 1939), stated:

The petitioners [respondent and D.G.W.U.] proffered the evidence of the employees of the Donnelly Company, some 1200 in number, to show how and why they formed the Donnelly Garment Workers Union, to show that no influence was brought to bear upon them by the employer either in the formation or administration of the Union, to show what the President of the Company had said to them at the mass meeting in the spring of 1937, to show that their freedom to organize and to choose their own representatives for the purpose of collective bargaining had not been interfered with by their employer, and to show that their union, both in its formation and administration was exclusively controlled and supported by them. The Trial Examiner refused to receive this evidence. He permitted the petitioners to make formal offers of proof.

We do not say that the Trial Examiner was required to take the same testimony from 1200 witnesses. There were available to him well known expedients for limiting the number of witnesses where their testimony was cumulative.

than 99 percent of the raw materials and supplies — consisting chiefly of cotton, wool acetate, rayon and linen — used at the factory are purchased and transported through the channels of interstate commerce from points outside the State of Missouri. Approximately 96 percent of the garments designed, manufactured, and sold are distributed through the channels of interstate commerce to points outside of the State of Missouri.

Officers of the respondent Company are: Nell Quinlan (Mrs. James A.) Reed, president and treasurer; Alex C. Green, vice-president; R. J. Ingraham, secretary. The principal departments of the respondent and the persons in charge of them are: Production, Lee Baty; Merchandising, Retail Store and Receiving, Elizabeth Reeves; Comptroller and Office Manager, J. B. Bachofer; and Employment Manager, Ella Mae Hyde.¹⁵

During the peak production period of the year, the respondent employs approximately 1200 persons.

The parties stipulated and agreed that the operations of the respondent have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States, and that the respondent is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

II. The Organizations Involved.

International Ladies' Garment Workers' Union, affiliated with the American Federation of Labor,¹⁶ is a labor organization admitting to membership the factory employees of the respondent.

Donnelly Garment Workers Union is an unaffiliated labor organization. According to its by-laws, it admits to membership all employees of the respondent.

[fol. 165] III. Unfair Labor Practices.

A. Respondent's Responsibility for the Activities of Various Employees.

In the incidents described in the following section, the respondent's responsibility for the activities of various

¹⁵For further findings concerning the respondent's supervisory staff see III A, *infra*.

¹⁶At the time of the original hearing the I.L.G.W.U. was unaffiliated.

employees who figured prominently in the organization of the D.G.W.U. must be determined. The Board contends that the respondent is responsible for their activities in most instances because of their supervisory status. The respondent asserts that they cannot be classified as supervisors because no authority to hire, discharge or discipline is vested in them. In view of the role these employees played in the organization and the establishment of the D.G.W.U. it is necessary to assay in general the status and function of "instructors" and "thread girls," in terms of their relationship to the management and to examine in some detail this relationship with respect to a number of individual employees. The undersigned will therefore determine the respondent's responsibility for their activities before considering the alleged unfair labor practices.

1. Instructors and Thread Girls.

The respondent's factory is in part composed of sewing sections. In each of these sections there are approximately 40 operators, each of whom operates a sewing machine. Assigned to each of these sections is an instructor and an assistant called a thread girl or floor girl. Among the duties of the instructor and thread girl in each section is the distribution of materials and supplies with which the operators work. Instructors also distribute directions as to how the work is to be done and teach operators how to execute each step of the process. This much is undisputed. It is also admitted by the respondent that prior to the advent of Lee Baty as production manager and factory superintendent the instructors had a part in determining lay-offs and discharges in their respective sections and also had disciplinary authority. Baty testified that after he became factory manager in June 1935, he took from the instructors and from all other supervisory employees the authority to hire, discharge, and discipline and vested all such authority in himself, so that he has been since that time the sole supervisory employee in the factory and personally observed the conduct, character of work, efficiency and general attitude of all employees.

The respondent has in its employ between 1100 and 1300 persons. On June 2, 1939, there were employed in the production and maintenance divisions, of which Baty is super-

intendent, 642 operators, 72 miscellaneous piece workers, 77 ironers, 11 folders, 41 examiners, 44 cutting department employees, 15 dividers, 44 instructors and distributors (thread girls or floor girls), 14 mechanics and helpers, 11 bundle boys, 52 clerical workers, 60 miscellaneous time-keepers, 20 porters and maids, working on 10 floors of the factory. In view of the number of employees, and the size of the factory, the undersigned finds that Baty's testimony in regard to the elimination of supervisors to be incredible.¹⁷

[fol: 166] It is plain from all the circumstances disclosed by the record that after June 1935, the instructors and the thread girls continued in their capacity as supervisors in charge of the operators who work in the various sewing sections of the factory. A number of the respondent's witnesses testified that instructors do not have the power to employ, discharge or discipline operators. There is substantial evidence, however, that they do perform functions which make them part of the supervisory staff.

The instructors, assisted by the thread girls¹⁸ assume complete charge of and are fully responsible for their respective sections of the factory. Among the duties of the instructor is the assignment of bundles containing the materials and supplies upon which the operators work, and the transmission to the operators of the respondent's instructions for the performance of the sewing processes. Mrs. Reeves, who preceded Baty as factory manager and is now in charge of respondent's merchandising depart-

¹⁷The undersigned is unimpressed by the evidence adduced by the respondent to establish that all supervisory authority in June 1935 was vested in Baty. Appraising the respondent's evidence in the light of the contradictions and impossibilities found throughout, especially in the testimony of Mrs. Reed, Mrs. Reeves and Baty, the undersigned is fully persuaded of its untrustworthy character. The evidence is further weakened by the plain indications, during examination of the instructors, thread girls and employees, assuming arguendo, that any change in the supervisory set up of the plant was made when Baty took charge, it was known only to Baty and the respondent's officials. Finally, it is most improbable that such a far reaching reorganization of a large factory would occur without some notice to those affected and particularly to the employees who had for years, according to Mrs. Reed, been under "... more supervision and more executives than — I know: I have more than are usual in the plant of this kind" ... yes our supervisors. Now in my plant I have 40 operators, 40 machines under one supervisor with an assistant one in charge."

¹⁸The evidence clearly indicates that in the absence of the instructor, her duties are performed by the thread girl.

ment, stated in an affidavit dated October 30, 1937, and confirmed the same in her testimony that: "competent instructors teach the operators the particular operations to be performed by them and constantly supervise the same." [emphasis supplied] In addition to these duties the instructors perform other functions as the representative of the management. When work is slack in the section the instructors determine who shall take a day off and in what ~~order~~ the operators will be released from the section. Although Baty denied that the instructors are charged with the duty of disciplining and reporting upon the efficiency of the operators who work in their respective section, the evidence is convincing that they do so the same as before the advent of Baty as factory manager, in June 1935. The instructor constitutes the link through which the operators learn the management's directions and the management learns whether a girl is a desirable employee, her capacity for work, her attitude toward work, and her performance of the work.

The record clearly reveals that the instructors exercise supervisory, economic control over the operators in their sections. This is particularly true when as here the operators are paid upon a piece-rate basis. The instructors plan the work in each section, determining when the work comes into the section which operator shall work upon the more desirable bundles. They keep the operators busy and correct their mistakes. When repair work is necessary, the instructor decides whether the operator must rip the work out and do it over on her own time or receive pay for the work. Instructors report to the office weekly at a "going over of the cards" on the operators work for the past week. During temporary slack periods the instructors designate those operators who can be spared or transferred to other sections.

Over and above the supervisory and economic control exercised by the instructors, they regard themselves as supervisors and are so regarded by the operators; they are paid twice a month, their names being carried on a time workers pay roll, while the operators are paid on a [fol. 167] piece rate basis weekly; and they are responsible to Baty for the quality and quantity of work in

their respective sections. Although a substantial number of employee-operators testified during the hearing, none of them stated that Baty personally gave them any instructions or directions or conferred with them about their work. The undersigned is convinced that there was no apparent change in the conduct of instructors or thread girls after June 1935. Furthermore, it is undisputed that the respondent has continued to hold out the instructors and thread girls to the employee-operators as supervisory employees and has given no notice of any kind to the operators that the instructors' authority had been reduced or in any way changed in June 1935.

The respondent contended that there is no distinction between the duties of the instructor and the thread girl, one having charge of quality and the other quantity, and that none of them act in a supervisory capacity. Even if it be assumed arguendo that there is no appreciable distinction, the undersigned is of the opinion that instructors and thread girls have supervisory authority. Mrs. Reeves testified that the word instructor and floor (thread) girls and the word supervisor "means one and the same to me." Rose Todd, hereinafter found to represent the management, testified that the respondent does not use the term "supervisor" but that it does have an employee called an instructor in charge of 40 operators and a second girl that might be called an assistant instructor. It is clear from the record and the undersigned is convinced and so finds, that the instructors and thread girls actually and in all respects serve as foremen and assistant foremen of the sections of 40 operators.¹⁹

¹⁹The absence of any hierarchy of supervisors between the operators and Baty, with solely the instructors to transmit orders and report on work, renders the instructors more nearly approximate to foremen than any other commonly known class of supervisors. The descriptions of foremen in works on labor relations often point to the "teacher" aspect of his duties. See Arthur G. Anderson, *Industrial Engineering and Factory Management*, (1928) page 39:

The foremen provides the necessary human element at the point of contact to make adjustments, rectify errors, remedy deficiencies, interpret and administer instructions, make reports, supervise work, and most important of all, provide personal leadership. In the final analysis the foreman is responsible for output. He is a manager, a teacher, a leader. At the furthest outpost of management he is management to the workers.

So viewed, the respondent is clearly responsible for their activities. See *N.L.R.B. v. Skinner & Kennedy Stationery Co.*, 113 F.(2d) 667, 670 (C.C.A. 8); *N.L.R.B. v. Christian Board of Publication*, 113 F.(2d) 678, 682 (C.C.A. 8); *Wilson & Company v. N.L.R.B.*, 123 F.(2d) 411, 414 (C.C.A. 8); *N.L.R.B. v. Gamble-Robinson Co.*, 129 F.(2d) 588, 590 (C.C.A. 8).

It is plain from the foregoing, that the instructors and thread girls are supervisory employees, and exercise economic control over the operators, that prior to June 1935, the instructors and the thread girls were admittedly supervisory employees, that since that time the respondent has continued to hold them out to the operators as supervisory employees, and that the respondent has given no notice of any kind to the operators that the instructors and thread girls have any less authority than formerly. Since the instructors and thread girls are charged with certain duties and economic control which are supervisory, and disciplinary in nature, their interests are closely related [fol. 168] to those of the management and are often incompatible with those of the ordinary worker. On the basis of all the evidence, the undersigned finds that instructors and thread girls are supervisory employees and that they act as representatives of the management in the factory.²⁰

2. Rose Todd.

Todd was one of the most active and outstanding among the employees of the respondent in the affairs of the League

²⁰The instructors are as important as the lead men and group leaders held by the Supreme Court to be employees of such a kind that the Board may base employer liability for unfair labor practices upon the employer's failure to prevent their activities in behalf of a favored union: *International Ass'n of Machinists v. N.L.R.B.*, 311 U.S. 72; *N.L.R.B. v. Link Belt Co.*, 311 U.S. 584; *H. J. Heinz Co. v. N.L.R.B.*, 311 U.S. 514. In the *Machinists* case the Supreme Court said (pp. 79-80):

According to petitioner these men were not foremen, let alone supervisors entrusted with executive and directorial functions, but merely "lead men" who by reason of long experience were skilled in handling new jobs and directed the set-up of the work.

The employer, however, may be held to have assisted the formation of a Union even though the acts of the so-called agents were not expressly authorized or might not be attributable to him on strict application of the rules of respondeat superior. We are dealing here, not with private rights (*Amalgamated Utility Workers v. Consolidated Edison Co.*, 309 U.S. 261), nor with technical concepts pertinent to an employer's legal responsibility to third persons for acts of his servants; but with a clear legislative policy to free the collective bargaining process from all taint of an employer's compulsion, domination or influence. . . . they [the lead men] were not high in the factory hierarchy and apparently did not have the power to hire or fire. But they did exercise general authority over the employees and were in a strategic position to translate to their subordinates the policies and desires of the management.

In the *H. J. Heinz* case the Supreme Court reaffirmed these principles and held that: "to the extent that petitioner may seek or be in a position to secure any advantage from these practices [by foremen and "group leaders"] they are not any the less within the condemnation of the act because petitioner did not authorize or direct them."

and in the formation and administration of the D.G.W.U. She was president of the League during the time that it played so effective a part in resisting the organizational campaign of the I.L.G.W.U. Todd was on the organizing committee of the D.G.W.U. and its first general chairman. Her status in the factory and her relation to the management is in dispute.

Todd, with an interruption of 2 years, has worked for the respondent for approximately 13 years. She was a nurse by profession and through acquaintance with Mrs. Reed as a nurse, secured a job at the respondent's factory in 1926. She worked for a short time as an operator and as a thread girl, during the early part of her employment. Also, prior to the interruption, Todd held various responsible positions with the respondent, including that of an instructor ²¹ and as an assistant to Dewey Atcheson, production engineer, in making time studies, studying production methods and studying rates of piece-work wages. She left her employment with the respondent in 1931 and for about 1 year worked for the Gernes Garment Company, where she took charge of the factory and later acted as a [fol. 169] traveling sales representative. When she returned to the employ of the respondent in 1933 Todd worked for several months as a thread girl. Until sometime in the spring of 1937 she helped in various sections of the factory spending a good share of her time in the sample department which makes sample dresses before general production begins.

From the record it is impossible to determine that Todd in 1937, 1938, and 1939 had any well-defined duties. During this period she was not assigned to any particular department, being directly responsible to Baty, the factory manager. Todd was assigned a desk in the factory — first on the ninth floor and later on the seventh floor — charged with the responsibility of keeping the various sections supplied with the necessary materials for maintaining operations and checking up on the delivery of various supplies that should be in the sections. In addition, if any of the sections were short of supplies which delayed the

²¹See Section III A, (1) supra for supervisory status of instructors.

work Todd was notified and arranged for the proper supplies to be forwarded to the department. These duties required that Todd move throughout the various sections of the factory and contact instructors and thread girls. For a period of 1938 Todd again worked with Dewey Atcheson on some special work. Baty testified that Todd received the same vacations as given to the instructors and that in August 1937, "He couldn't let Todd go [on vacation] in August as she was indispensable." The president of the First National Bank of Kansas City with which the company carried its account testified that he had known Todd for 10 or 12 years as "a kind of 'all-round man'" for the company and that she had come into the bank for several years as respondent's representative.

During the period from April 16 to 30, 1937, Todd was carried on the designing pay roll, from May 1 to 31, 1937, on the hand sewing pay roll, from June 1 to 30, 1937, on the button and button hole pay-roll and from July 1 to 15, 1937, on the receiving department pay roll, although she did not work in these sections during these pay periods. When the D.G.W.U. was organized she was receiving a salary of \$130 a month and although the D.G.W.U. expressed to the respondent a desire to have her services part time, the respondent continued to pay her the \$130 a month, in addition to which the D.G.W.U. paid her \$65 per month.

The undersigned, appraising Todd's entire employment record with the respondent, is persuaded and finds that her position in the factory was one of considerable responsibility, involving duties of a supervisory nature.

Evidence on Todd's activities in the factory plainly points to the fact that she occupied a close and confidential relation to the management which was made known to the employees by respondent's conduct. On April 23, 1937, when anti-I.L.G.W.U. demonstrations against Fern Sigler, a member of the I.L.G.W.U., took place in the factory, the disturbance was reported to Rose Todd. When Baty ordered Sigler from her section to the office he was accompanied by Todd. At the conference which followed, Todd dominated the scene and took the lead in questioning Sigler about her union affiliation although both Baty and

Mrs. Hyde, the employment manager, were present. A reading of the transcript of that conference shows that Todd opened the conference and talked to Sigler of the respondent's policy of operating an open shop as if she represented the respondent, for example, "... we have had union people work here for years. We don't care. We have hired union people. . . I talked to some of the girls yesterday afternoon and tried to get them to see that it is all right if you want to work and belong to the union. However, they feel so keenly about it, we don't think we can do anything about it. . . We are going to run an open shop as long as the majority feels that way." Todd also said: [fol. 170] "My advice to you is, that if you feel that strongly about the union and have enough people to back you up, be in a union shop. I wouldn't any more think I could join the union than a man in the moon. I'd expect to be put out on the street and left there." Baty and Hyde acquiesced in all that Todd said and talked in the same vein. Todd also discoursed at length upon "our" employment policy. After the demonstrations in Sigler's section and the conference in the office it was Todd who finally sent the employees back to work. Todd's status around the plant was such that the respondent's telephone operators announced meetings over the inter-departmental telephone when Rose Todd asked them to, and instructors took directions from Todd when she directed the form in which they were to turn in time slips for employees absent from work on D.G.W.U. business. In addition, Rose Todd's position as president of the League, in which all of the respondent's supervisory force including Mr. Keyes, sales manager, Mrs. Hyde, Mrs. Reeves and Dewey Atcheson were members, and which came into existence to counteract the activities of the I.L.G.W.U., marked her in the eyes of the employees as a person in whom the management had confidence and whose views reflected those of the management. The respondent did nothing to discourage Todd's activities, although fully aware of them.

Irrespective of Todd's supervisory status, the undersigned is of the view that the evidence, as a whole, clearly identifies her with the management in the minds of the em-

ployees.²² The undersigned finds that Rose Todd occupied a close and confidential position with the respondent and further finds that in such position she was acting for and on behalf of the respondent.

3. Hobart Atherton.

Hobart Atherton has been employed in the maintenance department of the respondent since November 1933. Atherton describes himself as the "clerk" of the company's maintenance department. He transmits orders to six employees who work with him in that department, shows them how to do the work when occasion demands, and keeps a record of the jobs performed. He also assists with repair work wherever needed. Atherton and the respondent deny that he is a supervisory employee in charge of the maintenance department. To accept their testimony would leave this department without supervision and would mean that each employee in the department decides for himself what repair jobs he will undertake. There is no evidence that any one else exercises any supervision or guidance over the work performed in the maintenance department, or that Baty, the factory superintendent, in any way directs these employees.

The undersigned finds that Hobart Atherton is a supervisory employee of the respondent in charge of the maintenance department of the plant.²³

²²International Ass'n of Machinists v. N.L.R.B., 311 U.S. 72, '80, in which the Court said:

The statute, we think purposely, does not define the particular methods or agents by which the employer may intermeddle unlawfully. So to confine representation of him would open easy escape from the Act's provisions. Nothing in it requires that such representation be limited to officials having any particular kind or degree of authority such as "hiring and firing," "disciplinary power," or even "supervisory capacity." These evidences of authority make more plain the connection of the actor with the employer, but their absence does not preclude the existence of such a connection. What is required is that substantial evidence show that the actor, whatever his official position, is acting in fact on behalf of the employer, not for himself or others only, and that, by whatever method or means, the employer brings pressure to bear upon his employees which deprives them of free and independent choice.

Cf. Cupples Co. Mfrs. v. N.L.R.B., 106 F.(2d) 100 (C.C.A.-8), where the Court refused to hold the respondent liable for the acts of an employee inasmuch as the respondent had not held out the said employee as a person having authority to advise others with respect to joining or not joining labor organizations, had not directed the acts to be done, and the acts had not been done with the respondent's knowledge or consent.

²³Atherton's position corresponds to those of the "group leaders" whose supervisory status was an issue in *H. J. Heinz Co. v. N.L.R.B.*, 311 U.S. 514, 518, 521.

4. Other Supervisory Employees.

The status of certain other employees who were active in the League or the D.G.W.U. and who occupy responsible positions with the respondent is in dispute. These persons are Florence Strickland, in charge of the pattern department; Lena Tylhurst, assistant factory manager and in charge of the inspection department; Martha Gray, in charge of the outlet store; Ortense Root, in charge of the sample department; Heath Cowan, in charge of the receiving department (piece goods); Marvin Price, in charge of building maintenance; Ted Scholes, in charge of the cutting department; and Mary Bogert, in charge of the dividing department. Some of these employees admittedly had supervisory authority before the appointment of Baty as factory manager. They are all, except Martha Gray, under the supervision of Baty and so far as the record indicates, their relationship to the management after Baty assumed charge was identical with their prior duties and responsibilities as far as the employees in the various departments were concerned. The employees in these departments were not aware of any curtailment in the authority of those in charge, after Baty was made factory manager.

The undersigned finds that the above-named persons are supervisory employees and as such were representatives of the management.²⁴

B. Events Prior to the Effective Date of the Act.

Prior to 1934 no effort had ever been made to organize the employees of the Donnelly Garment Company. In 1934 the I.L.G.W.U. established an office in Kansas City, Missouri, and announced in the papers that an attempt would be made to organize the garment workers of Kansas City. On March 15, 1934, the I.L.G.W.U. held an open meeting at the Musicians Hall to which all of the respondent's employees were invited. Another similar meeting was held at Eagles Hall on December 4, 1934. On both occasions the respondent's supervisory force attended the meetings in a group including Mrs. Reeves, then production manager,

²⁴The respondent contends that in Baty resided the sole supervisory responsibility over the employees in each of these departments. See footnote 17 supra, for the undersigned's rejection of this untenable position.

Mrs. Hyde, personnel manager, and many of the instructors. Rose Todd, whose relation to the management is discussed hereinbefore, attended the meeting at the Musicians Hall. Dewey Atcheson, production engineer, attended the meeting at Eagles Hall.

[fol. 172] During this period at least a dozen of the employees joined the I.L.G.W.U., several of whom became active, passing out notices of meetings and soliciting their fellow workers to join the organization. Many of the employees attending the meeting and others, irrespective of membership in the I.L.G.W.U., were called to the office where Mrs. Reeves questioned them about their interest in the union and warned them that joining would do them no good. Employees were variously told by Mrs. Reeves that they had been "listening too much to somebody outside," that "Deimelly's don't belong to the union and they never will" and she had thought they had better "sense" than to join the I.L.G.W.U. and that they had been "misled" in doing so, and they ought to have "a darn good spanking" for their own good. Mrs. Gray, in charge of respondent's outlet store, told employees it was a "shame" that an employee had joined the I.L.G.W.U.

Dewey Atchison asked employees why they did not come to the management instead of "going down to a bunch of foreigners," advised against getting "messed up" with the union and warned they would be fired if they did. The instructors warned many of the employees that those who joined the I.L.G.W.U. would be discharged and urged employees not to give their money "to those foreigners." One instructor, referred to the I.L.G.W.U. members as "scum."

A substantial number of the employees who joined the I.L.G.W.U. were laid off or discharged shortly after joining.²⁵ Approximately 12 employees in June 1934 attended a dinner at the home of Glynn Brooks Yarnell,²⁶ an em-

²⁵The undersigned makes no findings with respect to the reasons for these discharges which occurred prior to the effective date of the Act and which are not presently in issue.

²⁶The pleadings and record designate this employee as Glynn Brooks. At the close of the hearing the pleadings were amended and the record corrected to designate her as Glynn Brooks Yarnell.

ployee who had joined the I.L.G.W.U., where they discussed joining the I.L.G.W.U. Yarnell was discharged in July 1934 although she had worked for the respondent since December 1924. Within a few months all except one of the employees who attended the dinner were either laid off or discharged. As a result of these lay-offs or discharges the I.L.G.W.U. on December 6, 1934, filed a charge against the respondent under Section 7 (a) of the National Industrial Recovery Act, alleging that eight employees had been laid off because they joined the I.L.G.W.U. A hearing on these charges was held in Kansas City, Missouri, in April and May 1935. The taking of testimony was completed, but before a decision issued the National Industrial Recovery Act was declared unconstitutional by the Supreme Court of the United States.

In the latter part of 1934 and the first part of 1935 all the other employees who were known to have joined the I.L.G.W.U. were transferred from the main factory of the respondent to a temporary branch which was used by the respondent during the busy season. When the rush of work was over and the use of the temporary building discontinued the employees, most of whom had several years service, were laid off. Employees working in the main factory with less service were retained. A strict seniority system was not followed in the factory, although it was the customary practice to provide regular employment for the older and more experienced operators.

As a result of this sequence of events the employees became hesitant to join the I.L.G.W.U. and those who had joined denied their membership when questioned. Employees who had not joined were even careful not to talk to those suspected of I.L.G.W.U. membership for fear of some discrimination with respect to their jobs.

[fol. 173] In February 1935, Martha Gray, in charge of the respondent's outlet store, and Florence Strickland, in charge of the pattern department, formed an organization among the respondent's employees known as the "Nelly Don Loyalty League." The initial step in its organization was a meeting at the home of Gray, attended by approximately 50 employees representing the various sections of the factory. Within the next 3 days membership cards

were circulated and were signed by substantially all the employees. Florence Strickland, in circulating the cards, stated "that Mrs. Donnelly (Nell Quinlan Reed) would close her doors before she would have a union shop, and [employees] should sign these cards to keep — [their] jobs and keep [them] in work because she would close the doors." A statement was circulated along with the membership cards stating that:

We protest against and will resist all attempts of outside interference in the business of said company or with our relations to the company as employees.

We recognize the fact that . . . we have had generous and fair treatment from Nelly-Don (Nell Quinlan Reed) President of the company, and we repose our confidence in her rather than in professional agitators who are sent here to create discontent among the employees of the company.

Florence Strickland refused to allow Virginia Stroup, who was president of the I.L.G.W.U. local, to sign a membership card because she belonged to "another organization." Similarly Lena Allison, an instructor, refused to allow Frances Reidell a card on the ground that she was an I.L.G.W.U. member. Following the signing of the cards, on February 8, 1935, a mass meeting of all employees was held during working hours on the second floor of the building occupied by the respondent's plant, presided over by Martha Gray, who explained the meaning of the word "loyalty."

Meetings were regularly held on the second floor of the building. The meetings were announced by a notice to the instructors transmitted either by Mrs. Wherry, factory manager, or by the respondent's switchboard operator, calling each section and the instructors in each section notifying the employees to attend the meeting. Each of the sections in the plant had a representative elected by the employees in the section to represent them in the League. These representatives were chosen by passing a sheet of paper among the employees in each section while at their machines, on which nominations were made and then re-

²⁷The respondent did not at this time have the second floor under lease. See footnote 34 infra.

passing the same sheet around in a similar manner so that each employee could mark his vote on the sheet. Virtually all the respondent's supervisors, including Mrs. Reeves, Mae Hyde, Dewey Atchison, Martha Gray, and Florence Strickland were members of the League. The League had songs of loyalty and sponsored the wearing of pins bearing the initial "L" as a demonstration of loyalty to Nell Quinlan Reed.

[fol. 174] It is clear from the events cited above, that prior to the effective date of the Act, the respondent's supervisors expressed to employees the uncompromising hostility of the respondent toward all labor unions and particularly toward the I.L.G.W.U. Employees were made fully aware of their employer's attitude and those who applied for membership or joined the I.L.G.W.U. did so with a great deal of hesitancy. During this period it was made plain to the employees by their supervisors that loyalty to the respondent meant the renunciation of the Union. Membership and influence in the League enabled the respondent to foster an organized employee resistance to outside unions. Membership of management representatives and supervisory employees, in the League, convinced the rank and file of the respondent's employees that the League was an organization approved by the respondent to which they must give their support, and that they must correspondingly refrain from joining or assisting the I.L.G.W.U. which the League so consistently opposed.²⁸

The respondent contends that since the above-related activities took place prior to July 5, 1935, the effective date of the Act, they are irrelevant to the issues in this proceeding and that all evidence thereof should have been excluded. This contention fails to recognize that the League

²⁸Since the League was set up as a rival to the I.L.G.W.U., the League cannot be held out as a "purely social organization," as contended by the respondent. See *N.L.R.B. v. J. Freezer & Son*, 95 F.(2d) 840, 841 (C.C.A. 4) also Senate Committee on Education and Labor, S. Rept. No. 573, 74th Cong., 1st Sess. pp. 10, where the following statement appears:

Nor does anything in the bill interfere with the freedom of employers to establish pension benefits, outing clubs, recreational societies, and the like, so long as such organizations do not extend their functions to the field of collective bargaining, and so long as they are not used as a covert means of discriminating against or in favor of membership in any labor organization. (Emphasis supplied)

continued in existence after effective date of the Act. Furthermore, evidence of an employer's attitude and conduct with respect to labor unions for a reasonable period before the effective date of the Act has often been admitted for the purpose of evaluating the significance of events occurring after such date.²⁹

Since the League was inspired by the respondent and fully supported by its representatives from its inception, the undersigned is convinced that the respondent thereby forcibly impressed upon its employees its anti-union sentiments.

Further, the League was dominated and controlled by the respondent, and prior to the effective date of the Act, the respondent used it to prevent its employees from joining the I.L.G.W.U. or any other outside labor organization.³⁰

[fol. 175] C. Events Prior to April 27, 1937;
Interference, Restraint, and Coercion.

Following the lay off and discharge of the I.L.G.W.U. members in late 1934 and early 1935, the organization of the League in 1935, and the inability of the I.L.G.W.U. to carry to a successful conclusion the case under the NRA, due to the decision declaring the Act unconstitutional, labor relations at respondent's factory remained in a quiescent condition until March 1937. During this period the I.L.G.W.U. abandoned temporarily its efforts to organize the factory. The League continued in existence, and solicited new employees to join. In some instances, instructors brought new employees notices that they were eligible to membership, directed them to the desk of the League president and later brought them their League pins.

On February 26, 1937, there appeared in the Kansas City Star an article stating that the I.L.G.W.U. had announced a campaign to organize the respondent's employees and had appropriated a large sum of money to be spent in a

²⁹See N.L.R.B. v. Pacific Greyhound Lines, 303 U.S. 272, 273; N.L.R.B. v. Pennsylvania Greyhound Lines, 303 U.S. 261, 268-270; N.L.R.B. v. Link-Belt Co., 311 U.S. 584, 588.

³⁰See Section C, *infra*, for findings concerning the League after the effective date of the Act. As to events described in Section B, above, the undersigned makes no finding of unfair labor practices, since they occurred prior to the effective date of the Act.

drive for recognition of the I.L.G.W.U. as the collective bargaining agent in the respondent's factory.

On March 2, 1937, Mary Sprofera and Inez Warren, shipping clerks, went during working hours to the various departments of the factory and secured the signatures of respondent's approximately 800 factory employees to a pledge which read as follows:

We, the undersigned, as members of the Donnelly Garment Company Co: wish to make it known we are positively happy and contented with the positions which we hold with the organization and refuse to acknowledge any union labor organization. We are thankful for the real humanitarian interest extended by our employer, Mrs. Reed. [Emphasis supplied]

The petition was passed through most, if not all, of the sections, being handed from operator to operator while they were at work at their machines. With six exceptions the instructors and thread girls did not sign when the petition went through their respective section, although they knew the petition was being circulated. Instructors Carrie Abrams, Ada Wolf, Clara Finnell, and Helen Little, and thread girls, Nellie Biggs, Grace Davis, and Emma Grover signed the pledge. Three employees, Sylvia Hull, Mamie Carlson, and Elsie Greenhave, refused to sign, one stating that she disagreed with the expression of opposition to labor organizations, another, that she was not satisfied with conditions in the factory. Two of these individuals later signed for fear of losing their jobs, their names being later erased.

On the afternoon of the same day, Mary Sprofera and Inez Warren took the signed pledges to Mrs. Reed's home and presented them to her. Thereafter, as the result of arrangements made between Mrs. Reed and a newspaper representative, a picture of the employees presenting the pledge was taken and appeared on the front page of the Kansas City Star, accompanied by the statement that Mrs. Reed was going to place the pledge in the cornerstone of the new building she was planning to erect.

Mrs. Reed shortly thereafter expressed to her office manager, Marguerite Keyes, a wish that all employees, not merely factory employees, would sign the petition. Keyes requested an employee in her department, Pauline Shartzer, to circulate the pledge of refusal to acknowledge any labor organization, among all the employees who had theretofore not signed. As a result, everyone in the plant including the supervisory employees, watchmen, porters, maids and stenographers, indeed every employee except the three heretofore mentioned, signed the "loyalty" pledge. The instructors and thread girls who signed when the petition first went through their section, signed again a second [fol. 176] time on the same page with the other instructors and thread girls. The additional pledge was thereafter presented to Mrs. Reed.

Under all the circumstances above related the undersigned finds that the respondent, by permitting Mary Sprofera and Inez Warren, and requesting Pauline Shartzer to circulate the pledges in the factory during working hours and by requesting that additional signatures be secured, gave approval and lent assistance and encouragement to the solicitation of its employees to pledge themselves not to join the I.L.G.W.U.³¹ and thereby interfered with, restrained, and coerced them in the free choice of a collective bargaining agent.³²

On March 6, 1937, the Kansas City Journal-Post carried an article stating that David Dubinsky, president of the I.L.G.W.U., at a meeting of 700 union members in Kansas City had officially launched a movement to organize employees of the Donnelly Company. This announcement was followed by a letter to the respondent from the I.L.G.W.U. under date of March 9, 1937, requesting a conference be

³¹The solicitation of expressions of employee opinion on union matters during working hours, with the knowledge and assistance of the employer, has been uniformly held to violate the Act. *N.L.R.B. v. Remington & Rand, Inc.*, 94 F.(2d) 862, 870 (C.C.A. 2); *Titan Metal Mfg. Co. v. N.L.R.B.*, 106 F.(2d) 254, 260 (C.C.A. 3); *Wilson & Co. v. N.L.R.B.*, 103 F.(2d) 243, 251 (C.C.A. 8).

³²It may be noted that the circulation of this pledge, coincidental with the renewed organizational activities of the I.L.G.W.U. among the respondent's employees, bears striking similarity to the circulation of the League membership cards and anti-union statements by the respondent 2 years earlier. Soon after the I.L.G.W.U. had initiated its campaign among the employees. In each instance the pleas to the employees to be "loyal" to the respondent and to resist outside interference, appeared at crucial junctures in the campaign of the I.L.G.W.U. to organize the respondent's employees.

tween the I.L.G.W.U. and representatives of the respondent. The respondent did not reply to this letter.

A meeting of all the respondent's employees took place during working hours ³³ on the afternoon of March 18, 1937, on the second floor of the building housing the respondent's [fol. 177] plant. ³⁴ Employees were notified orally by their instructors that they were to attend the meeting, the instructors having been notified by either Mr's. Wherry or over the factory telephone system. Most all of the supervisory force were in attendance at the meeting, including Ella Mae Hyde, Martha Gray, and Elizabeth Reeves, the instructors and the thread girls. Rose Todd, with the assistance of Hobart Atherton, both of whom were officials of the League and supervisory employees, called the meeting and Todd presided. Chairs for the meeting were rented from the Kansas City Rental Chair Company under the name of the League. From these facts, the undersigned concludes, despite the denial of Rose Todd, ³⁵ that the meeting was sponsored by the League and its officials.

³³The Board contends and the respondent denies that this meeting and the one of April 27, 1937, referred to later herein, were held during working hours. Evaluating the evidence in its entirety, the undersigned is not persuaded by the testimony adduced by the respondent. A finding favorable to the respondent's position would necessitate the acceptance of testimony which is, contrary to the weight of the evidence. The indefinite and routine testimony of respondent's witnesses with their lack of knowledge of details, and the mutually corroborative testimony of Board's witnesses, supported by other evidence, that operators attended meetings in their uniforms, that employees went to the meetings in groups and that no definite time was given in the call for the meetings, although the hours of work were staggered and the operators were working overtime, convinces the undersigned that the meetings of March 18 and April 27, 1937, were held during working hours.

³⁴The meeting was held on the second floor of the building in which the respondent's plant was located; however, the respondent on March 18, 1937, did not have the second floor under lease, although occupying practically the entire building. Although the first and second floors were not leased by the respondent prior to May 1937, employees had regularly attended Loyalty League meetings and company style shows, held on these floors and did not know whether they were leased by the respondent. The building occupied by the respondent had ten floors and even during the time when the respondent did not have the first and second floors leased, there were no other occupants in the building except the respondent.

³⁵At the hearing Todd testified that the meeting was a "spontaneous" gathering of the employees to discuss what means might be adopted to protect the respondent's employees against anticipated violence in connection with the I.L.G.W.U.'s projected organizational campaign. The record indicates that the respondent's employees had become alarmed by hearing reports that at other garment factories in Kansas City where the I.L.G.W.U. was conducting organizational campaigns clashes had occurred, involving pickets, non-striking employees, and local police. Some of respondent's employees discussed the reports and expressed fear that an organizational campaign at the respondent's factory might precipitate similar strikes and violence.

Rose Todd made a few opening remarks, after which Mrs. Reed was requested to come in and address the employees. Mrs. Reed brought with her the letter which the respondent had received from the I.L.G.W.U. under date of March 9, 1937, requesting a conference. The letter was read to the employees. Mrs. Reed then made a talk in which she expressed her pleasure at receiving the "loyalty" pledge which had been presented to her on March 2, told the employees that the respondent was an institution to be proud of, that it had taken care of its employees by keeping the factory in operation during the depression, and that she intended to continue to run the business. Then she spoke of threats of violence that the I.L.G.W.U. was alleged to have made against employees of the company, and promised protection against such violence. Finally she directed her remarks to the question of unionization of the factory. What she said at this point is a matter of dispute. The Board's witnesses testified that Mrs. Reed stated she would close her factory before she would permit it to be unionized and that she would not allow "Dubinsky or any other 'sky' to tell her how to run her business." According to respondent's version, Mrs. Reed stated "... Neither Dubinsky or any other but-tinsky is going to intimidate me or the company into forcing you to join the International (I.L.G.W.U.) against your will." The undersigned does not consider it necessary to resolve the precise conflict in this testimony, since in the undersigned's view, Mrs. Reed's own version of her speech at the March 18 meeting, and the events which took place there, constituted an unfair labor practice. The meeting was sponsored by the League, which is controlled by the respondent, and was attended by most of the respondent's supervisory employees. Through the presence of supervisors and the sponsorship of the League which had for its purpose the exclusion of outside union organization from the factory, the employees must inevitably have been aware of the anti-union character of the meeting and could not have been free to express their independent views. It may be true, as the respondent contends, that many of them feared the alleged threats of the I.L.G.W.U. but instead of permitting the employees to decide for themselves what attitude they would adopt with regard to the I.L.G.W.U. the respondent

[fol. 178] seized upon such fears as may have existed to build up and strengthen a militant employee opposition toward that labor organization. Mrs. Reed's remarks indicated that the I.L.G.W.U. was the common enemy of both the respondent and its employees and promised the employees the respondent's protection and assistance against that organization. Mrs. Reed disparagingly labelled David Dubinsky, president of the I.L.G.W.U., a "but-tin-sky" who was seeking to force the respondent's employees to join that Union. Mrs. Reed further told the employees that she had "had lots of nice things happen to me in my lifetime but I have never had anything that made me so proud and so happy" as the receipt of the "loyalty" pledge in which the employees unanimously agreed to refuse to acknowledge any union labor organization. While Mrs. Reed sought to appear as a disinterested defender of the respondent's employees in the exercise of their right to join or not to join a labor organization, against the background of the respondent's widely publicized hostility to the I.L.G.W.U. and the past repeated reminders to the employees that "loyalty" to the respondent demanded repudiation of outside union organizations, the undersigned is convinced that Mrs. Reed's remarks³⁶ made it plain that the respondent's attitude toward unionization had not changed and the membership of any of the employees in the I.L.G.W.U. was not to be tolerated.

The undersigned finds that by its sponsorship and domination of the March 18 meeting and by Mrs. Reed's talk at said meeting the respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

On April 22, 1937, the Kansas City Journal-Post carried an announcement by the I.L.G.W.U. that Sylvia Hull, one of respondent's operators, had been named as a delegate to a convention of the I.L.G.W.U. Hull appeared for work

³⁶The undersigned is not unmindful that Mrs. Reed told the employees "you know that you have never been asked whether or not you belong to a union . . . if you want to belong that is your own business . . ." The undersigned cannot agree, however, that the reference to the employees' rights rendered them wholly free with respect to joining unions. On the contrary, in view of the respondent's past hostility to labor organizations, the undersigned believes that the employees could not fail to be discouraged from joining the I.L.G.W.U. or any other labor organization.

as usual at the respondent's plant on the morning of April 23. A few minutes after 8 o'clock while she was working at her machine on the 8th floor of the plant, two groups of employees — each consisting of 12 or 20 persons — successively gathered at her machine. They demanded to know what authority she had to represent them at the I.L.G.W.U. convention. Some of the operators stood on top of nearby tables, others sang Loyalty League songs. They told Hull that they would not allow her to belong to the Union, and demanded that she surrender her League pin, which she refused unless they returned to her the cost of the pin. Shortly thereafter, the operators returned; gave Hull 35 cents and she surrendered the pin. Lena Allison, the instructor in charge of Hull's section, was present throughout the demonstrations, but did not order the girls back to work or take any action of any kind; Mary Bogart, in charge of the dividing section, was present and pointed Hull out to some of the demonstrators. Ella Mae Hyde, the respondent's employment manager, appeared on the scene of the demonstration and told the demonstrators to return to work. The operators refused, saying they would not work while Hull was there. Hyde thereupon took her down to the office on another floor. They were followed by a number of the demonstrators shouting that they would not return to work until they heard Hull say she would go home. Hull then said "I will go home, I didn't know the girls felt this way about it or I wouldn't have done it." According to Hull's testimony, which is undenied, Hyde told her she would have [fol. 179] to go home. Hull replied that she did not want to quit but would go home for the day. Hyde took her employee-identification badge and Hull left a telephone number through which she might be reached.³⁷

Later, during the same morning on which the above-described incident occurred, Fern Sigler, an operator who had displayed on that day for the first time her I.L.G.W.U. membership pin, was subjected to similar demonstrations. The employees surrounded Sigler's machine and sang songs, derided her, took her League pin from her and shouted "get up and go home, we don't want you in here." The demonstrations subsided when Baty, factory manager,

³⁷The alleged discriminatory discharge of Hull based upon this incident is discussed in section E. *infra*.

accompanied by Rose Todd ordered Sigler from her machine to the office. As Sigler left the floor the operators shouted; "we are not going to work as long as she remains here." When Baty insisted on sending Sigler home she argued with him that she had a right to join the I.L.G.W.U. and it was the employer's duty to control the employees. Baty replied "We don't go in for the Wagner Act, we are just running our business here not a law office." Todd then stated "We are going to run an open shop as long as the majority feels that way." After the conference participated in by Baty, Hyde, Todd and Sigler, Sigler was sent home. Baty promised to talk to the operators and "quiet them down" and to call her back when the unrest had subsided. Despite his promise Baty admitted at the hearing that he did nothing to allay antagonism toward the I.L.G.W.U. in the plant.³⁸

The undersigned finds that the respondent approved of and encouraged the demonstrations and took advantage of them to reveal once more to the employees its hostility to the I.L.G.W.U. and its support of anti-I.L.G.W.U. activities. Further the undersigned finds that by such acts the respondent interfered with, restrained, and coerced its employees of the rights guaranteed by Section 7 of the Act.

The undersigned further finds that by using the League and its officers as hereinabove described for the purpose of impeding and preventing the organization of its employees by the I.L.G.W.U., the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.³⁹

³⁸The complaint contains no allegation of discriminatory treatment of Sigler. It should be noted that Sigler is the sister of May Fike, allegedly discharged for union activities, and referred to in Section E. hereof.

³⁹The respondent contends that these demonstrations were of a 'spontaneous' nature for which it is not responsible and that the fear and resentment of the employees to the I.L.G.W.U. was the motivating cause of these demonstrations. The respondent condoned, approved and encouraged these demonstrations and made no sincere effort to check the demonstrators. Neither did it in any way discipline the demonstrators who had disrupted the normal operation of the factory nor did it take any steps to make it possible for these employees to return to their work in the factory unmolested. No deductions were made in the wages of time workers who participated in these incidents. See Matter of General Shoe Corporation and Georgia Federation of Labor, 99 F.(2d) 223 (C.C.A. 5); N.L.R.B. v. General Motors Corp., 116 F.(2d) 306, 309-310 (C.C.A. 7); N.L.R.B. v. Elkland Leather Co., 114 F.(2d) 221, 224 (C.C.A. 3).

[fol. 180] D. Domination and interference with the formation and administration of the D.G.W.U. and contribution of support; interference, restraint, and coercion.

1. The Formation of the D.G.W.U.

Shortly after the March 18 meeting a committee, which had been appointed at the close of that meeting, consisting of Rose Todd, Loyalty League president, and the representative of the respondent, Hobart Atherton, an officer of the League and a supervisor, and Sally Ormsby, employed Tyler, an attorney. When Tyler asked for a retainer fee Todd borrowed \$1,000 from the First National Bank of Kansas City on the unsecured note of the Loyalty League, deposited the money in the Loyalty League checking account and a League check signed by Todd as president and Hartman as treasurer was given to Tyler. While the first conference with Tyler was limited to the discussion of the possibility of obtaining an injunction against the I.L.G. W.U., after the Act was held constitutional on April 12, 1937, Tyler suggested the formation of an independent union.

On April 27, 1937, a mass meeting of all respondent's employees was held during working hours,⁴⁰ on the second floor of the building in which the respondent's plant was located.⁴¹ Notice of the meeting was given to the employees through their respective instructors who had been notified by Mrs. Wherry, or over the factory telephone system. Instructors and thread girls attended the meeting along with the operators in their sections. Chairs for the meeting were rented in the name of and paid for by the Loyalty League.

Rose Todd who was still president of the Loyalty League presided at the meeting. Her opening remarks indicated that she regarded the meeting as a part of the series which preceded it for she stated she hoped, "this meeting is going to be as enthusiastic as our last one was" and explained that she had called the meeting "as chairman of the com-

⁴⁰See footnote 33 *supra*.

⁴¹See footnote 34 *supra*.

mittee of employees." ⁴² Todd stated that she had con-[fol. 181] sulted two lawyers, Mr. Gosset and Mr. Tyler, whom she had known for years, and they advised forming a plant union. She explained that the Loyalty League, being a purely social organization, would not take care of the situation; that another organization was necessary to give them representation to definitely confer with the proper representatives of the respondent at times when they felt that it was necessary. She pointed out that a union would have to be formed if they were to successfully resist attempts of organization by an outside union. She then told the employees that the new organization would be called the "Donnelly Garment Workers Union" and although she was distressed as they were at having to use the word "union" it seemed to be necessary.

Mr. Tyler was then introduced by Todd. Tyler stated that, "Some weeks ago several employees came to my office and employed Mr. Gosset and myself as legal advisers of the employees, so that I am in fact at this moment acting as an attorney for you or for many of you even though you have never seen me before . . . You may believe in unions or you may disbelieve in unions and still agree with the advice I am about to offer you. The reason for this advice I am going to give you is that we believe it is to your best interest to organize your own individual

⁴²The meeting preceding it was, according to witnesses called by the Board, the meeting of March 18 at which Mrs. Reed spoke. The company claimed a meeting took place either the last of March or the first of April, however, the many inconsistencies in the evidence offered by the respondent respecting this meeting, and its entire improbability in view of the complete circumstances compels the undersigned to conclude that there was no meeting between March 18 and April 27. The borrowing of \$1,000 from the bank on March 30 for the purpose of paying Tyler a fee is inconsistent with a meeting on or about that date at which money for Tyler was supposedly raised. Saucke testified that she moved the assessment at a meeting on or about March 30 for paying the fee yet she further testified she never heard of Tyler prior to April 27. Atherton, Warth, Barnes and Dean on the other hand testified that at the meeting on or about March 30, Rose Todd explained about the committee seeing Tyler. This seems unlikely since the minutes of April 27 show this to have occurred at that meeting. Atherton testified that he believed Eva Liberman made the motion that each employee contribute 50 cents for the fee. Saucke when first examined on cross as to whether she made a motion in the spring of 1938 to assess each employee \$1 to pay Tyler his fee had no recollection of making such a motion but when confronted with the minutes of the 1938 meeting remembers that she made such a motion both in 1937 and again in 1939. This alleged meeting is furthermore the only meeting for which no minutes or other written record was furnished by the respondent or the independent union.

unaffiliated plant union of the employees of the Donnelly Garment Company and proceed with such a union." Tyler went on to explain that one of the reasons for the organization was the fact that the L.L.G.W.U. had sent a representative to its national convention and "in order to stop this and to make it clear that you are speaking for yourselves through your own representatives whom you choose, we think your own union is desirable." He also stated, "I do not think this action can or will be considered as an act of unfriendliness to your employer. I believe they recognize your right to take this step and it isn't an unfriendly act to them. [Emphasis supplied] In fact, it is much better for them and yourselves for you to have your own union with your own representatives rather than having a group trying to represent outsiders from New York." Todd then said, "Well, we are together as an entire group of employees. Let's form this organization." It was unanimously decided without any discussion and by a unanimous vote of the approximately 1300 assembled employees to form such a union. A nominating committee of five was then appointed by Todd to select a slate composed of a General Chairman and eight Group Chairmen to serve as representatives and officers of the new organization. While the committee retired to select its nominees, charter membership cards bearing the name "Donnelly Garment Workers Union" previously prepared were distributed for signature. Thereafter Tyler read the bylaws⁴³ which Todd, Atherton and Ormsby had requested him to draft. They were immediately adopted without alterations. The nomination committee returned to the meeting and presented the names of nominees for General Chairman and Group Chairmen who were unanimously elected as a group with Rose Todd as General Chairman. Thirteen hundred charter

⁴³The bylaws indicate the purpose of the D.G.W.U. was in part the same as that of the Loyalty League which, in the words of Rose Todd, had become inadequate to give the employees the "protection" they needed. Article II of the bylaws provides *inter alia*:

The purpose of this organization (D.G.W.U.) shall be . . . the protection of employees and members of this union from coercion, intimidation, violence, or threats of violence in order to force them to join unions organized and dominated by outsiders and not employees of this plant.

membership cards previously distributed were collected and [fol. 182] the meeting declared adjourned. "

The facts as related above, make it plain that the organizational meeting of the D.G.W.U. was planned, organized and under the complete control of respondent's representatives. Under all the circumstances the undersigned concludes and finds, that the concept of an independent union originated with respondent's supervisory employees and further, that the respondent through the activities of its supervisory employees gave approval, and lent assistance and encouragement to the D.G.W.U.

[fol. 183] 2. Membership and participation by other supervisors in the D.G.W.U.

In addition to Todd's and Atherton's membership and participation in the D.G.W.U. as representatives of the management, the instructors and thread girls all attended

"The committee of employees, Todd, Atherton and Ormsby, were instrumental in calling the meeting of April 27, "after a general request from a great many employees that we try to do something for our own protection." This same group had been appointed as a committee at a meeting sponsored by the Loyalty League on March 18 for the same purpose. The ledger sheets of the Kansas City chair rental company show the chairs were rented by the "Ille, Don" Loyalty League to be used on that date and cancelled check of the Loyalty League shows the League drew a check in favor of the chair rental company in payment therefor. The respondent's telephone operator called on the inter-departmental telephone system each department of the building and gave notice that Todd was calling a meeting of employees on the second floor. Todd presided at the meeting but denied that she was acting in her capacity as President of the League. Todd, out of the \$1,000 borrowed in the name of the League, paid \$500 to Tyler as a retaining fee. Though it is contended that the \$500 retainer fee was in payment only for advice concerning a projected injunction suit against the D.G.W.U. for the protection of the respondent's employees, the undersigned is convinced that the fee covered Tyler's services in connection with the organization of the D.G.W.U., the proposed injunction suit having been rejected as a method of protection. Instead, Tyler advised the League committee to form an unaffiliated union. He attended the April 27 meeting and read the bylaws which had previously drafted on the instruction of the League committee. Thereafter in May or June 1937, he drafted proposals for a closed shop contract and a wage agreement hereinafter referred to, with the respondent. Tyler received no fees from the D.G.W.U. until November 23, 1937 which was 7 months after its formation and at a time when the D.G.W.U. had undertaken other legal action involving court litigation. Minutes of the group chairman of the D.G.W.U. for June 15, 1937 records that Rose Todd stated in explanation of the fee "... we paid Mr. Tyler a \$500 retainer fee. He helped us write up our bylaws and working agreement and will advise us and help us when we need it."

From all the circumstances above related the undersigned finds that the meeting of April 27 was sponsored and financed by the Loyalty League through Todd, Atherton and Ormsby, and further that the League financed the employment of Tyler, paid him a retainer fee of \$500 and that the fee covered the cost of his services in connection with the formation of the D.G.W.U. and the drafting of its bylaws.

the meeting of April 27 and signed cards for membership in the D.G.W.U. Dewey Atchinson, production engineer, joined, but resigned July 14, 1937. The minutes of the meeting show that instructors and thread girls and others closely allied with the management regularly attended and participated in the meetings. At five different meetings, December 7, 1937, March 8, 1938, April 26, 1938, January 10, 1939, and February 7, 1939, Stella Willis, an instructor, participated in the meetings. On one occasion, she suggested an assessment of 50 cents per member to pay Tyler a further fee. While the motion was not put at that meeting, at a meeting held shortly thereafter, upon the motion of Helen Little, an instructor, an assessment of \$1 per member for Tyler's fee was voted. In making her motion, Instructor Little stated:

I think most of the employees realize that if they belonged to the C.I.O. or the A. F. of L. they would be assessed quite a little bit more. I think the minimum is \$1.25 per month, and I think everyone would be willing to help out and donate \$1.

In 1939 Harry Grogan, whose name was listed on the payroll under the heading, "Instructors and Floor Ladies," urged the employees to vote an assessment of \$2 apiece for Tyler. On this occasion Todd pointed out that low wages were paid in I.L.G.W.U. shops, and Grogan added that even \$10 was not a third or even fourth of what it would have cost them, impliedly referring to the I.L.G.W.U., so that \$2 each would be fair for Tyler's fee.

At the election of D.G.W.U. officers in April 1938, five thread girls in succession, Nellie Riggs, Jessie Mudd, Rose Hendricks, Edna Rawlings, and Clarice Martin and two persons whose names appeared on the payroll heading "Baying Records," ⁴⁵ Hilda Richmond and Veda Hoyland either nominated or seconded the nomination of members of the two nominating committees which in turn recommended nominees for officers of the D.G.W.U. Both committees nominated were unanimously elected. The two nominating committees proposed their respective slates of

⁴⁵This pay-roll heading covers the executive force of the factory, including heads of departments such as factory manager, head of the retail store, personnel manager, and Mrs. Wherry who was variously described as factory manager and head of instructors.

officers, each of which recommended Rose Todd for chairman, and Marjorie Green for secretary, both of whom had held these positions in 1937, for treasurer, Jack McConaughy, who had been on the board of Group Chairmen in 1937, and for representatives of the mechanics, Walter Higgins. However, despite this close similarity on the two slates and although no campaigning was done for those nominees whose names appeared on only one slate, when a standing vote was taken, Todd, who was presiding, called on two instructors who were present at the meeting, Lola Steens and Stella Willis to give their opinions as to which slate received the larger vote.

[fol. 184] The election in April, 1939, repeated in many respects the occurrences of the previous year. However, this time Rose Todd herself appointed the two nominating committees without going through the formality of nominations and unanimous elections. Hilda Richmond, whose closeness to management is indicated by appearance of her name on the "Buying Record's" pay roll⁴⁶ was named by Todd as chairman of one of the committees and Harry Grogan whose name appeared on the pay roll under "Instructors and Floor Ladies" was a member of the other. These two nominating committees each brought in slates naming Todd chairman, Jack McConaughy treasurer, Marjorie Green, secretary, and Walter Higgins representative of mechanics. Again the election was by an open standing vote.

Heath Cowan, in charge of the receiving department; Marvin Price, in charge of building maintenance; and Ortense Root, in charge of the sample department were members of the D.G.W.U. and, as shown by its minutes, attended meetings and participated in its affairs. Ted Scoles, in charge of the cutting department; Lena Tyhurst, in charge of the inspection department; and Mary Bogart, in charge of the dividing department were also members of the D.G.W.U. At various times the question was raised by employees as to whether department heads and instructors should have the right to be members of the D.G.W.U. and attend and participate in its meetings. However, Todd's statement of the D.G.W.U. policy that all employees except

⁴⁶See footnote 45, *supra*.

the executives Mr. Keyes, Mrs. Keyes, Mr. Green, Mr. Baty and Mrs. Hyde were eligible remained in effect. Employees, nevertheless, at various times expressed the view that the presence of such persons at meetings excluded them from speaking freely of their complaints. In a meeting of the D.G.W.U. Group Chairmen, Hobart Atherton when he stated, "I think department heads, instructors and so forth, should have all the privileges of membership except that they shall not be allowed the right to vote," realized the danger of participation by supervisory employees in the affairs of an organization devoted to the improvement of the employees' economic relationship with the employer.

Inasmuch as the respondent through its supervisory employees' membership and participation in the activities of the D.G.W.U., continued its control and direction of that organization, the undersigned finds that respondent is responsible for their activities, and that they were acting for and in behalf of the respondent.

3. The contracts; closed-shop, check-off and piece-work rates.

On April 28, 1937, the day following the D.G.W.U.'s organizational meeting, Rose Todd took the membership cards to Mrs. Reed, president of the respondent, and stated to her the D.G.W.U. had been organized by the unanimous vote of the employees and represented a majority. Mrs. Reed assured her that the respondent would consider the matter. On May 6, 1937, the Group Chairmen of the D.G.W.U. met with Mrs. Reed and told her that they would want a contract covering hours, wages, and working conditions "which up to now have been satisfactory" and that they would like a closed-shop. Mrs. Reed at once replied, "I understand that is very essential to industrial peace." The D.G.W.U. then stated that they wished to pay part of Todd's salary. Mrs. Reed, in agreeing, stated, "I do not feel at the present time that you [Todd] need give all of your time to the union."

"From these facts it is clear, and the undersigned finds, that recognition as the exclusive bargaining agent of the employees was accorded the D.G.W.U. almost as soon as it was organized, although no statement of recognition in writing appears until the contract between the respondent and the D.G.W.U. was signed on May 27, 1937.

[fol. 185] Tyler thereafter prepared a draft of the proposed agreement containing a closed-shop provision, which was approved by the Group Chairmen of the D.G.W.U. on the morning of May 27. Tyler read the contract aloud to Mrs. Reed and the other representatives of the respondent and urged that it be given prompt attention. Mrs. Reed replied: "I would like to have a little time to look over this agreement. However, I think it is very much in line — and there will possibly be one or two little changes." Later she added, "I think the only changes it will be necessary to make will be just legal phraseology — the spirit of this agreement is satisfactory." At the close of the conference it was agreed that Mrs. Reed and other representatives of the respondent would meet with Todd and Tyler at 3 o'clock that afternoon, and that Tyler would then report the outcome to the Group Chairmen of the D.G.W.U. at 3:30 o'clock.

The D.G.W.U. committee met in the afternoon as agreed. Its minutes disclose that Tyler reported that the respondent had proposed three or four modifications, the acceptance of which he recommended to the committee. One change suggested by the respondent was the insertion of a provision limiting membership on the D.G.W.U. bargaining committee to persons employed by the respondent for a period of at least a year immediately preceding election to such committee. Tyler explained to the committee the purpose of this provision was "to eliminate the possibility of someone getting on this committee who is not a true representative of the employees and who may be working here merely to act as a traitor to the company." The agreement as modified was then adopted by the committee and signed by the parties.

Subsequently, on June 22, 1937, a supplemental agreement was entered into between the D.G.W.U. and the respondent establishing minimum wages for time workers and minimum weekly guarantees to piece-workers. At the request of Todd, Baty, factory manager, supplied her with a detailed statement of wage rates in the factory and on the basis of this information, Tyler prepared a contract which was accepted by the respondent without substantial change. Terms of the supplemental agreement were never

submitted to the D.G.W.U. membership for approval before or after its execution, although it set the employees wages for a period of one year with a provision for an automatic extension. The D.G.W.U. demanded a minimum weekly wage of \$16.50 for the respondent's lowest paid piece-work operators. Todd explained that the I.L.G.W.U. had announced that it was seeking a \$16 weekly minimum in the garment industry, and she therefore thought it a good idea to improve a little on that minimum to defeat efforts of the I.L.G.W.U. to organize the respondent's employees. The respondent acceded to this demand. By its terms the original agreement of May 27, 1937, was to remain in effect for a period of 2 years while the expiration of the supplemental wage agreement of June 22, 1937, was set for July 1, 1938, with a provision for automatic extension from year to year unless either party gave written notice to the other of its desire to terminate it. On June 2, 1939, the original agreement of May 27, 1937, was extended for a 2-year period without any modification except to provide for its automatic renewal. These two agreements have continued in effect without change.

In August or September 1937 the company agreed, at the request of the D.G.W.U., to a check-off of the monthly dues of the members. Employees signed a card prepared and distributed by the respondent agreeing to permit the dues to be checked-off at the end of each month. Pursuant to this agreement the respondent submits to the D.G.W.U. a memorandum showing the number of employees on the pay roll during the month and a check covering their dues. The D.G.W.U. issues no receipts, keeps no record of individual dues payments and has no means of knowing what individuals paid dues during any month. The General Chairman or Treasurer of the D.G.W.U. were unable to state at the hearing what proportion of each month an employee must work to entitle the D.G.W.U. to collect the [fol. 186] dues from the respondent. The checks turned over for each month subsequent to July 1937 range from about \$250 to \$325. The amount deducted from each employee appears on the employees' respective check stub. Although the D.G.W.U. has never furnished the respondent with a list of its members, every employee of the respondent, upon the assumption that all employees under the closed-shop

are eligible to belong to the D.G.W.U., except the salesmen whose dues the company's decline to check off, authorized the checking off of the dues.

Soon after the D.G.W.U. was organized, the Group Chairmen, who composed its executive committee, appointed a committee to represent the D.G.W.U. in adjusting piece-work rates with the respondent. Some 600 to 800 of the respondent's 1300 employees were paid on a piece-work basis, so the procedure by which the piece-work rate is checked is concededly "the most important thing the individual operators have to bargain for with the company." The committee appointed consisted of Lulu Nichols, Josephine Spalito, and Rose Todd. Nichols is a supervisory employee and Spalito her assistant, both of whom are employed by the respondent for the purpose of establishing for it the piece-work prices paid the employees. Nichols was described, by Mrs. Hyde, as an "executive" of the respondent, and admittedly has final authority in setting piece-work prices in the first instance, and of adjusting subsequent complaints of operators that the price set is too low. Nichols' duty is thus described by Mrs. Reeves, who testified:

A. After a garment is designed, that particular garment is analyzed very thoroughly by Mrs. Nichols, who was a former piece-work operator; Josephine Spalito, a former piece-work operator, Rose Todd, a former piece-work operator. Prices are then discussed with the operator and also the instructor . . .

Q. If there is any employee who thinks the price is too low, what redress does she have?

A. She discusses it with the people who set the prices - Miss Todd, Mrs. Nichols, and her instructor . . .

Q. Who has complete charge of the making price rates after the complete report is made by this committee?

A. Mrs. Nichols.

Thus the same persons who set rates on behalf of the respondent in the first instance are also representatives of the D.G.W.U. for the purpose of protesting and negotiating in regard to those rates in behalf of the D.G.W.U. and the employees.

The respondent's immediate recognition of the D.G.W.U. and its ready acquiescence to a closed-shop and check-off through the medium of an organization which allowed it to retain control of the piece-work rates, when viewed in the light of respondent's persistent hostility to independently functioning unions clearly reveals its determination to prevent the employees from enjoying the rights conferred upon them by the Act, by forcing them to become members of an impotent collective bargaining agency to which, by its closed-shop and check-off, it had given assurances of financial stability.

[fol. 187] 4. Respondent's contribution of support to the D.G.W.U.

In addition to the holding of the organizational meeting of the D.G.W.U. on respondent's time ⁴⁸ the succeeding three or four membership meetings were likewise held during working hours. Thereafter regular monthly meetings of the general membership were held after hours, but they continued to be held on the second and later the first floor of the building in which the factory is located. Prior to May 10, 1937, on which date the respondent took over the second floor under lease, the D.G.W.U. had obtained the permission of the landlord to use, without charge, the second floor as a meeting place. After May 10, 1937, the D.G.W.U. continued to meet on the second floor until April 1938 when the respondent remodeled a portion of the first floor to serve as an auditorium. From that time on, this became the meeting place of the D.G.W.U. Although the D.G.W.U. met on the property under lease by the respondent monthly from May 1937 on, it was not until November 1937 that the question of paying rental was raised. The first rental payment was made in April 1938, and consisted of \$3 per meeting, held during the preceding twelve months. It is plain that prior to November 1937, rent-free use of the respondent's premises was contemplated and that the retroactive payment of rent was an afterthought. Rose Todd the General Chairman, twice announced in meetings of the D.G.W.U. that such use of the respondent's facilities was entirely proper. Meetings of the Group Chairmen, who composed the executive committee of the D.G.W.U., prior

⁴⁸See footnote 33, *supra*.

to May 1938, were held in the office of Beulah Spilsbury, in charge of the designing department and thereafter in the auditorium on the first floor. No rental was ever paid for the use of this property.⁴⁹

The general meetings of the D.G.W.U. and the meetings of the Group Chairmen were called through the respondent's facilities, either by the use of the respondent's inter-departmental telephone system or by sending a so-called I.D.M. to each department of the factory through the respondent's regular messenger service. Announcement of the meeting over the respondent's factory telephone system was accomplished by Todd notifying the telephone operator to call each department.⁵⁰ Each section has a telephone, and it is the duty of the instructor or thread girl to answer the phone and convey any message that might be given either to the employees generally if it was a general meeting or to the specific employee in question if it was a Group Chairmen meeting. The inter-departmental telephones were not available to the employees generally and could only be used for calls by supervisory employees pertaining to official business. An I.D.M. is the respondent's term for inter-departmental memoranda. When Todd wished to call a meeting of the employees generally, or of the Group Chairmen, she regularly prepared a notice on the company's I.D.M. paper which was sent to each section of the factory by the respondent's messenger service. Upon the arrival of the I.D.M. in any section, it was the duty of the instructor or thread girl to read the I.D.M. and pass it to the operators in the section:

[fol. 188] Miss Todd also utilized the I.D.M. system for collecting assessments and sending instructions pertaining to D.G.W.U. business to the members on the respondent's

⁴⁹The D.G.W.U.'s treasury book shows only two payments to the respondent for use of space. Both of these were for meetings of the entire membership, as may be seen from the testimony of McConaughy concerning the first of these payments and the fact that the second payment was for "for 13 meetings" one less than the number of general membership meetings as shown by the minutes of the D.G.W.U. to have taken place between the two payments.

⁵⁰Todd testified: "In using our house telephone system in that manner, we have what we call floor girls or thread girls in each department. It is absolutely her duty to answer the phone and convey any message that might be given. That was what was done."

time.⁵¹ The D.G.W.U. receives its mail at the factory through respondent's messengers and freely uses the factory bulletin board.)

Piece work operators who served as Group Chairmen or officers were paid by the respondent for the time lost at work while attending D.G.W.U. business, the time workers being allowed to take time from work with no deductions from their pay.

Rose Todd was a full time employee of the respondent. While a request was made to Mrs. Reed immediately after the formation of the D.G.W.U. that it should pay part of her salary, she continued to receive a full salary of \$130 a month from the respondent and in addition thereto received \$65 from the D.G.W.U. Despite receiving her full salary from the respondent, the nature of the work given her by the respondent to perform permitted her to devote as much time as she desired to the D.G.W.U. business without deduction from her pay. Thus she carried on the business of the D.G.W.U., representing 1300 or more employees, during the respondent's normal working hours. Soon after formation of the D.G.W.U. at the respondent's Kansas City plant, Todd went to the respondent's temporary auxiliary plant at St. Joseph, Missouri, to organize the employees in that factory. She was absent from her employment about a half day without a salary deduction.

At a meeting on May 11, 1937, Rose Todd announced that "our (D.G.W.U.) work will be conducted" at a desk on the ninth floor of the plant and that she could be reached on union business at "any time necessary." Todd's desk was the D.G.W.U.'s only office. Its records were kept there in a file belonging to the respondent and its business

⁵¹Miss Todd made the following announcement at a D.G.W.U. meeting in March 8, 1938: "I will tell you while we are all together how we will handle the payment of this . . . I would suggest that we appoint one person in each department, and I will appoint that person myself, and will send out an I.D.M. with instructions on how to collect this money. It is my idea as to what is put on that I.D.M."

"The name of the person who is to collect that money, and have that person list the names of each person in the department. When this is turned in, put the money in an envelope and return it to me between 11:00 and 12:45 on the 11th floor, or between 4:00 and 5:00 on the 10th floor, with the name of each member paid or unpaid, your name and section number, with the money."

was regularly transacted by employees who went there for that purpose. The check-off cards which were printed and distributed by the respondent were signed and turned in at this desk over a two weeks' period by employees who came there from all over the factory. Membership cards of those who were absent from the April 27, 1937, meeting, or of new members were signed and left at this desk. Grievances of members were reported to Todd during the working day and she attended to them during her hours of work. She collected money for the D.G.W.U. on the respondent's time and directed the D.G.W.U. representatives to do the same. When Todd left on her vacation in December 1937, she informed the Group Chairman that a substitute, Miss Riddle, would be at the desk from 11 a. m. to 12:45 each day — much longer than the usual half hour lunch hour — to transact D.G.W.U. business.

The membership cards of the D.G.W.U. were mimeographed after working hours by employees in the respondent's circular department, on a machine owned by the respondent. Copies of the D.G.W.U. bylaws were produced [fol. 189] on a ditto machine belonging to the respondent. The D.G.W.U. owns no typewriter, and the secretary of the D.G.W.U. has often used a typewriter owned by the respondent for typing the minutes of the meetings of the D.G.W.U. and of the Group Chairman.

It is apparent from the facts set forth above, and the undersigned finds, that the respondent has contributed a large measure of support to the D.G.W.U.

Summary and Conclusions.

From the foregoing facts, conclusions, and findings, it is clear that, notwithstanding the contention by the respondent and the D.G.W.U. that the D.G.W.U.'s formation was the result of the employees' own choice of a collective bargaining representative, the respondent has not permitted the employees to freely exercise that right of self-organization free from employer influence and domination.

Prior to the effective date of the act the respondent adopted a policy of opposition and hostility to labor organizations generally and to the I.L.G.W.U. specifically. In furtherance of this policy, the management made it

plain to the employees that "loyalty" to the respondent was synonymous with the rejection of membership in any labor organization. To solidify its purpose, the respondent inspired and dominated the Loyalty League, which had for its primary purpose the frustration of the efforts of the I.L.G.W.U. to organize the employees. In 1937, when the I.L.G.W.U. announced a renewal of its efforts to organize the respondent's employees after the Act had been held constitutional, the respondent through the medium of its Loyalty League and supervisory employees formed the D.G.W.U. to prevent its employees from selecting any "outside" labor organization as their representative. It was the League's officers and representatives of the management, Rose Todd and Hobart Atherton who hired the attorney who planned the D.G.W.U. and wrote its by-laws. It was the League which borrowed \$1,000 at the bank on the security of its members, including Rose Todd and other supervisory employees, with which to pay a retainer fee of \$500 to the attorney, a part of which retainer was for advice and services in connection with the formation of the D.G.W.U. The meeting of April 27, 1937, at which the D.G.W.U. was formed was sponsored and financed by the League. Rose Todd, at the time President of the League, directed and dominated the course of the meeting. The employees had heard nothing of the formation of a labor union prior to the meeting, but under the stimulus and pressure provided by the respondent they emerged from that gathering with a labor organization of approximately 1300 members. It is axiomatic that a labor organization free from employer domination does not persuade employees to join its ranks so rapidly. Like the League, membership in the D.G.W.U. includes a large number of the respondent's supervisory employees whose presence inevitably prevents the organization from being free of the respondent's domination. Through Rose Todd, General Chairman of the D.G.W.U., the respondent has retained complete control of that organization.

The record conclusively shows that the respondent contributed substantial support to the D.G.W.U. The organization has no office or headquarters of any kind apart from the respondent's factory. Respondent's facilities have been freely used in carrying on the business of the

D.G.W.U. and while the respondent contends it had no knowledge of the use of its various facilities, the practice has been so persistent and frequent that the undersigned is of the opinion that such a contention is impossible of belief and finds that the respondent had knowledge of these activities.

Rose Todd is allowed to take whatever time during working hours that is necessary for the handling of D.G.W.U. business without any deduction from her salary [fol. 190] and makes a practice of taking up its business at any time during the day. Also Todd, as President of the League and General Chairman of the D.G.W.U., was accorded almost complete freedom to roam through the factory engaging alternately in performing duties in connection with the factory's operation and handling matters relating first to the Loyalty League and then to the D.G.W.U. without interference or objection from the respondent. These facts demonstrate that the respondent has permitted and encouraged Todd to make use of the respondent's time in conducting the business of the D.G.W.U. This necessarily conveys to the employees of the respondent its approval of the League and the D.G.W.U. That the respondent lent encouragement and assistance to the D.G.W.U. becomes even more evident when its co-operative attitude toward the D.G.W.U. is compared with the hostility with which it met the efforts of the I.L.G.W.U. to organize the employees.

The completeness of the respondent's domination becomes more clear, as shown by the personnel of the D.G.W.U. committee for the adjustment of piece-work rates. Two of the three of this committee are persons employed by the respondent to set piece-work rates in the first instance and when one of these two, Lulu Nichols, is the respondent's authority on the finality of the rate, the result is that the respondent sits on both sides of the bargaining table and the aggrieved operators are left without any means of independent collective bargaining with regard to piece-work rates, ordinarily a matter jealously guarded for the promotion of the employees.

Negotiations between the respondent and the D.G.W.U. with respect to the provisions in the Articles of Agreement

signed on May 27, 1937, were completed within a few hours, and signed on the same day it was submitted to the respondent. Despite Mrs. Reed's determined opposition to a closed-shop, she made no protest when the D.G.W.U. made such a proposal. She stated: "I understand that [a closed-shop] is very essential to industrial peace." The closed-shop was granted and membership in a labor organization of the respondent's choice became obligatory upon the employees, buttressed with a check-off of dues, to guarantee financial stability to the organization that the respondent initiated and thereafter controlled.

On all the evidence, the undersigned finds the respondent dominated and interfered with the formation and administration of the D.G.W.U. and contributed support thereto, and that the respondent thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

The D.G.W.U. is not and never has been the lawful representative of the respondent's employees for the purpose of collective bargaining in regard to the rates of pay, wages, hours of employment, and other conditions of employment. Under these circumstances, the undersigned finds that the contract, supplemental wage agreement, any extension, renewal, modification or supplement thereof, and any superseding contract between the respondent and the D.G.W.U. are void and of no effect. Independent of this finding of the invalidity of the above mentioned contracts, the closed-shop provision is invalid, having been made with a labor organization established, maintained, and assisted by unfair labor practices, therefore, the closed-shop provision does not fall within the proviso of Section 8 (3) of the Act.

The undersigned further finds that the respondent, by entering into a contract containing a closed-shop provision with the D.G.W.U., discriminated in regard to the hire and tenure and other terms of employment of its employees, thereby encouraging membership in the D.G.W.U. and discouraging membership in the I.L.G.W.U., and that it thereby interfered with, restrained, and coerced the employees in the exercise of the rights guaranteed them in Section 7 of the Act.

[fol. 191] In addition, the undersigned concludes and finds that the respondent, by using the dominated Loyalty League to impede and prevent the employees free choice of labor organization, by permitting the circulation and requesting the employees to sign the pledge of March 2, 1937, and by the speech of Mrs. Reed at the March 18, 1937 meeting, has in these and other respects set forth above interfered with, restrained, and coerced the employees in the exercise of the rights guaranteed in Section 7 of the Act.

E. The Alleged Discharges.

The amended complaint alleges that the respondent discharged Sylvia Hull on or about April 23, 1937, and May Fike on or about April 26, 1937, and thereafter refused to reinstate them because they had joined and assisted the I.L.G.W.U.

Sylvia Hull was employed as a sewing machine operator by the respondent, with one interruption of 7 months for a period of 8 years. She was originally employed in the spring of 1928 and her employment was terminated on April 23, 1937. Hull became a member of the I.L.G.W.U. on March 23, 1937, and on April 22, 1937, it was publicly announced in a Kansas City newspaper that she had been selected by the I.L.G.W.U. to represent the respondent's employees at a convention of that organization.

The undersigned has previously described the anti-union demonstration by employees against Hull on the morning of April 23, 1937, which the undersigned found was condoned and encouraged by the respondent. During the demonstration, Mrs. Hyde, respondent's employment manager, removed Hull from her machine and told her that she would have to go home. Hull replied that she did not want to quit but would go home for the day. Hyde took her employee identification card which was necessary for admission to the factory. When Hull asked how she would get back into the plant, Hyde told her that she would come down to the door and admit her. At the same time, Mrs. Hyde took the telephone number of a neighbor, through whom Hull had stated she could be reached and agreed to call her, requesting Hull to get in touch with respondent if she did not receive a call inasmuch as the telephone num-

ber that Hull left was that of a neighbor. Hull thereupon left the plant. Hyde testified that the next morning and on another occasion she attempted to reach Hull through the number Hull had given her in order to recall her to work, but was unable to reach Hull and that since that time, she has never applied for reinstatement. Hull did not testify and the record is silent as to whether she ever received Hyde's message which it is found Hyde attempted to deliver.

Respondent contends that Hull voluntarily left the employ of the respondent. This contention was based on Hull's statement made when a number of the anti-union demonstrators demanded that she go home, and also from the fact that she did not seek to return. However, when Mrs. Hyde told her she would have to leave the plant, Hull refused to quit her employment but agreed to go home for the day. These facts plainly show that Hull did not voluntarily give up her position with the respondent and only acquiesced in a one day lay off under pressure from the respondent. Furthermore, from the fact that Hyde agreed to call her indicates that the respondent did not consider Hull's statement a resignation of her employment.

The undersigned finds that Sylvia Hull did not voluntarily leave the employment of the respondent but that she was temporarily laid off by the respondent because of her membership in and activity on behalf of the I.L.G.W.U. The undersigned therefore finds that the respondent discriminated in the regard to her tenure of employment, thereby discouraging membership in the I.L.G.W.U. and interfering with, restraining, and coercing its employees [fol. 192] in the exercise of the rights guaranteed in Section 7 of the Act. The undersigned further finds that under all the circumstances the respondent's efforts to communicate with Hull as to her lay off was equivalent to an offer of reinstatement and the respondent has not discriminatorily refused to reinstate her within the meaning of Section 8 (3) of the Act.

May Fike was employed by the respondent sometime in 1927 and was, except for a 2 year period in 1931 and 1932, employed continuously until May 1937 when she left, at her request on a vacation. May Fike joined the I.L.G.W.U.

on March 15, 1937. The fact that Fike was a member of the I.L.G.W.U. was not known to the respondent, nor that she was the sister of Fern Sigler, who was excluded from the factory in April 23, 1937, as a result of a demonstration, hereinbefore referred to.

Fike's testimony as to conversations with respondent's agents and an alleged discriminatory lay off, if credited, provides a foundation which would afford an inference that her relationship to Sigler and her union membership was in part at least a motivating reason for the refusal of the respondent to reemploy her after she left on a vacation which was unauthorized. The undersigned does not credit this testimony of Fike: ⁵²

Sometime in the latter part of April, Fike advised her instructor that she desired to take a vacation. The instructor referred Fike to Mrs. Hyde, the employment manager. Fike explained to Hyde that she wanted the privilege of taking her vacation at a time other than a period set for all of the operators in the section, because her husband was having a vacation at that particular time. It is undenied that it is the customary practice of the respondent to grant vacations to the operators in a section at the same time. Hyde advised Fike that if she did take her vacation, her employment would be terminated and her return to work would depend upon whether there was any work for her. Fike left on her vacation and upon her return called Hyde and was advised that there was no work for her at that time and to call later. Fike called on several occasions thereafter and was advised by Hyde that there was no work available and to call later. On the last occasion Hyde told Fike that she would call her when the respondent

⁵²The undersigned is not unmindful of the fact that Fike worked on the same floor with Sigler and was present during the demonstration of April 23, 1937, nor of the fact that Fike testified that Pearl Atchison, her instructor, spoke to her after the demonstration and inquired if she were a member of the I.L.G.W.U., warning Fike that she was in danger of losing her job because of the situation. Neither does the undersigned believe that there was any discrimination in Fike's lay off shortly thereafter, it appearing that an error was made in the selection of an operator for lay off and she was immediately returned to work. The undersigned is convinced from all the circumstances, that Fike's testimony with respect to the incidents occurring before she took her vacation were after-thoughts and an attempt by her to make it appear that the respondent's refusal to reinstate her after an unauthorized vacation was discriminatory.

needed her, and as far as the record indicates Fike, up to July 1939, had not been called for work.

Respondent defends the termination of Fike's employment on the grounds that she left voluntarily on April 30, 1937, after being told that if she took her vacation at that time her employment would be terminated. The undersigned is of the opinion that Fike was so advised by Hyde at the time she insisted on leaving on her vacation, and the undersigned finds that May Fike left her work voluntarily, [fol. 193] on April 30, 1937, terminating her employment with the respondent.

The undersigned finds that May Fike was not discharged because of relationship to Sigler or her membership in the Union. The undersigned further finds that, in view of all the circumstances, there is no substantial evidence to indicate that she was refused reinstatement for these reasons.

IV. The Effect of the Unfair Labor Practices Upon Commerce.

The undersigned finds that the activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy.

Since it has been found that the respondent has engaged in certain unfair labor practices, the undersigned will recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

The undersigned, having found that the respondent has dominated and interfered with the formation and administration of the D.G.W.U. and contributed support to it, in order to effectuate the policies of the Act and free the employees of the respondent from such domination and interference and the effects thereof, which constitute a continuing obstacle to the exercise by the employees of the rights guaranteed them by the Act, will recommend that

the respondent withdraw all recognition from the D.G.W.U. as the representative of any of the respondent's employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, and other conditions of employment, and completely to disestablish it as such representative.⁵³

The undersigned, having also found that the respondent entered into an unlawful contract with the D.G.W.U. providing for a closed-shop, and in addition, agreed to the deduction of D.G.W.U. dues from the employees' wages as an integral part of the respondent's campaign to deny the employees the rights guaranteed them in the Act, will recommend that the respondent cease and desist from giving effect to the contract of May 21, 1937, and to the supplemental wage agreement of June 22, 1937, or to any extension, renewal, modification or supplement thereof, or any superseding contract or agreement which may now be in force. Nothing in this recommendation should be taken, however, to require the respondent to vary those wages, hours, and other substantive features of its relations with the employees themselves, if any, which the respondent established in the performance of such contracts as extended, renewed, modified, supplemented and superseded.⁵⁴ The undersigned will also recommend that the respondent cease and desist from giving effect to any check-off agreement with the D.G.W.U. The undersigned is of the opinion that, under the circumstances of this case, the respondent should be required to reimburse each employee for any amounts which the respondent has deducted from the wages of the employee for dues and assessments in the D.G.W.U. The respondent concluded a closed-shop contract with the D.G.W.U., a dominated organization, thus compelling its employees to become and remain members of the illegal organization. The check-off agreement, a [fol. 194] device by which the respondent assured the financial stability of the dominated organization, could, as practiced, no more be avoided by the employees than could the compulsory membership requirement. The under-

⁵³N.L.R.B. v. Pennsylvania Greyhound Lines, 303 U.S. 261; N.L.R.B. v. Pacific Greyhound Lines, Inc., 303 U.S. 272.

⁵⁴National Licorice Co. v. N.L.R.B. 309 U.S. 350, 365-367.

signed finds that the monies ~~that~~ deducted from the wages of the employees constituted the price of retaining their jobs, a price coerced from them for respondent's purpose of supporting and maintaining the organization which respondent had dominated in order to thwart bona fide representation. The undersigned further finds that, as a result of the imposition of the illegal closed-shop and check-off requirements, the employees suffered a definite loss and deprivation of wages equal to the amounts exacted from them for illegal purposes. The undersigned also finds that in these circumstances, the propriety of a recommendation requiring reimbursement of dues is particularly applicable, if the unfair labor practices are to be fully remedied and the purposes and policies of the Act are to be completely effectuated by restoration of the status quo. Hence, the undersigned will recommend that respondent reimburse its former and present employees for the amounts deducted from their wages for dues and assessments in the D.G.W.U. ⁵⁵

The undersigned has found that the respondent has discriminated in regard to the hire and tenure of employment of Sylvia Hull because of her membership in and activities on behalf of the I.L.G.W.U. The undersigned also found that Sylvia Hull never communicated with the respondent after she left the plant on April 23, and that the respondent made bona-fide but unsuccessful efforts to communicate with her to offer her reinstatement. Further, that under all the circumstances, the respondent's action was equivalent to an offer of reinstatement which Hull, by her failure to communicate with the respondent after instructions to do so, refused to accept. The undersigned will therefore recommend that the customary order of reinstatement be withheld, and that the respondent not be required to make Hull whole for any loss of pay incurred because of the discrimination against her on April 23, 1937.

The respondent's entire course of conduct, including its many and varied forms of interference, restraint, and

⁵⁵N.L.R.B. v. Mackay Radio & Telegraph Co., 304 U.S. 333, 348, wherein that court said: "As we have held in National Labor Relations Board v. Pennsylvania Greyhound Lines, Inc., No. 413, October term, 1937, the relief which the statute empowers the Board to grant is to be adapted to the situation which calls for redress."

coercion, its domination and support of the D.G.W.U., and its discriminatory discharge of Sylvia Hull discloses a fixed purpose on the part of respondent to defeat self-organization and its objects. Because of the respondent's unlawful conduct in the past and its underlying purpose, the undersigned is convinced that there is a real danger of the respondent engaging in other related unfair labor practices proscribed by the Act in the future. The preventative purpose of the Act will be thwarted unless the undersigned's recommendation is coextensive with the threat. In order, therefore, to make effective the interdependent guarantees of Section 7 of the Act, to prevent a recurrence of unfair labor practices, and thereby to minimize strife which burdens and obstructs commerce, and thus effectuate the policies of the Act, the undersigned will recommend that the respondent cease and desist from in any manner infringing the rights guaranteed in Section 7 of the Act.

The undersigned also has found that the respondent has not discriminated in regard to the hire and tenure of employment of May Fike, and therefore will recommend that the complaint be dismissed as to May Fike.

Upon the foregoing findings of fact and upon the entire record in the case, the undersigned makes the following:

[fol. 195]

Conclusions of Law

1. International Ladies' Garment Workers' Union, and Donnelly Garment Workers Union are labor organizations within the meaning of Section 2 (5) of the Act.

2. By dominating and interfering with the formation and administration of Donnelly Garment Workers Union and contributing support to it, the respondent has engaged and is engaging in unfair labor practices within the meaning of Section 8 (2) of the Act.

3. By discriminating in regard to the hire and tenure and terms and conditions of employment of Sylvia Hull and other employees, thereby encouraging membership in the Donnelly Garment Workers Union and discouraging membership in the International Ladies' Garment Workers' Union, the respondent has engaged and is engaging in un-

fair labor practices within the meaning of Section 8 (3) of the Act.

4. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

6. The respondent has not discriminated in regard to the hire and tenure of employment of May Fike, within the meaning of Section 8 (3) of the Act. The respondent has not violated Section 8 (3) of the Act by refusing to reinstate Sylvia Hull.

Recommendations.

Upon the basis of the foregoing findings of fact and conclusions of law, the undersigned recommends that the respondent, Donnelly Garment Company (Kansas City, Missouri) and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Dominating or interfering with the formation and administration of Donnelly Garment Workers Union or the formation or administration of any other labor organization of its employees, or from contributing support to the Donnelly Garment Workers Union or any other labor organization of its employees;

(b) Giving effect to its contract of May 27, 1937, and supplemental wage agreement of June 22, 1937, or to any extension, renewal, modification, or supplement thereof, or to any superseding contract or agreement which may now be in force with the Donnelly Garment Workers Union and from giving effect to its check-off agreement with the Donnelly Garment Workers Union;

(c) Discouraging membership in International Ladies' Garment Workers' Union or any other labor organization of its employees, or encouraging membership in Donnelly.

Garment Workers Union or any other labor organization of its employees, by laying off any of its employees, or in any manner discriminating in regard to their hire and tenure of employment, or any term or condition of employment;

[fol. 196] (d) Dominating, controlling, and using the Donnelly Loyalty League to interfere with, restrain, and coerce its employees in the exercise of the rights guaranteed in Section 7 of the Act;

(e) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right of self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, or to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

(a) Withdraw all recognition from Donnelly Garment Workers Union as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, and completely disestablish Donnelly Garment Workers as such representative;

(b) Reimburse its former and present employees for all dues and assessments, if any, which it has deducted from their wages on behalf of the Donnelly Garment Workers Union;

(c) Post immediately in conspicuous places on every floor throughout the respondent's Kansas City factory, and maintain for a period of at least sixty (60) consecutive days, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is recommended that it cease and desist in paragraph 1 (a), (b), (c), (d), and (e) hereof; (2) that it will take the affirmative action set forth in paragraph 2 (a) and (b) hereof; and (3) that the respondent's employees are free to be-

come or remain members of the International Ladies' Garment Workers' Union and that the respondent will not in any manner discriminate against any employee because of membership or activity in such organization.

Notify the Executive Secretary of the Board in writing within ten (10) days of the receipt of this Intermediate Report what steps the respondent has taken to comply herewith.

It is further recommended that the complaint be dismissed insofar as it alleges that the respondent discriminated in regard to the hire and tenure of employment of May Fike.

It is further recommended that unless on or before ten (10) days from the date of the receipt of this Intermediate Report, the respondent notifies said Executive Secretary in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent to take the action aforesaid.

As provided in Section 37 of Article II of the Rules and Regulations of the National Labor Relations Board — Series 2, as amended, effective October 28, 1942 — any party may within fifteen (15) days from the date hereof, pursuant to Section 37 of Article II of said Rules and Regulations, file with the Board, Shoreham Building, Washington, D. C., an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding [fol. 197] (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof. As further provided in said Section 37, should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date hereof.

JAMES C. BATTEN,
Trial Examiner.

Date: November 27, 1942.

[fol. 207] (Respondent, Donnelly Garment Company, Statement of Exceptions to Intermediate Report of Trial Examiner dated November 27, 1942.)

United States of America

Before the National Labor Relations Board

In the Matter of

Donnelly Garment Company, Respondent,
and

International Ladies' Garment Workers' Union
and

Donnelly Garment Workers' Union, Party to the Contract, Intervener.

Case No. C-1382

Comes now the above named respondent Donnelly Garment Company and, reserving the right to file such further objections and exceptions as it may be lawfully entitled to make or save, files this its statement of exceptions and objects and excepts to the Intermediate Report of the Trial Examiner herein (dated November 27, 1942), and to the findings, statements, inferences, conclusions and recommendations contained therein; to the acts and rulings of the Trial Examiner and of the National Labor Relations Board in said case and in the hearings thereof; to the conduct of said proceedings and to the various acts and rulings of the Board and Trial Examiner in connection therewith, as follows, to-wit:

[fol. 208]

1.

Respondent excepts to the Intermediate Report and to the several findings, conclusions and recommendations of the Trial Examiner therein, for the reason that same thwart and violate the prime purpose and provisions of the National Labor Relations Act and deny to respondent and its employees the rights conferred by said Act and particularly the rights and benefits of collective bargaining conferred by said Act, in that the evidence clearly and overwhelmingly shows that the Donnelly Garment Workers' Union through its executive committee was at all times the free choice of a majority (in fact 100%) of respondent's working employees as their bargaining agency for

purposes of collective bargaining and by reason of which the contracts between respondent and that union were valid, and the findings, conclusions and recommendations of the Trial Examiner being contrary thereto are, and any order of the Board in accordance therewith would be, in contravention of the National Labor Relations Act and illegal.

2.

Respondent excepts to the Intermediate Report for the reason that the conclusions and recommendations therein contained are unsupported by the evidence and by the findings of fact; and the findings of fact, upon which the recommendations of the Trial Examiner purport to be based, are unsupported by the evidence.

3.

Respondent excepts to the Intermediate Report for the reason that said report is based upon a proceeding which is invalid, void, and in violation of the due process clause of the Fifth Amendment to the Constitution of the United States.

[fol. 209]

4.

Respondent excepts to the Intermediate Report for the reason that said report denies respondent and all of its employees the right of collective bargaining guaranteed by the National Labor Relations Act.

5.

Respondent excepts to the Intermediate Report for the reason that the Trial Examiner failed and refused to consider, find and recommend that this proceeding be dismissed, in whole or in part, for each and all of the reasons specified in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 of Part A of Respondent's Answer (Board's Exhibit No. 1-JJJ) and by adoption and reference contained in respondent's answer to amended complaint (Board's Exhibit No. 1-LLLL).

6.

Respondent excepts to the Intermediate Report for the reason that the Trial Examiner failed and refused to consider, find and report that this proceeding be dismissed

for each and all of the reasons specified in Part B of the Amended Answer, Exhibit No. 1-JJJ, and by adoption and reference contained in Respondent's Answer to Amended Complaint, Exhibit No. 1-LLLL.

7.

Respondent excepts to the Intermediate Report for the reason that the Trial Examiner failed and refused to investigate, by secret election or otherwise, the true representatives of respondent's employees and so report and certify the same in accordance with the petition contained in Part C of the Amended Answer, Exhibit No. 1-JJJ, and by adoption and reference contained in Respondent's Answer to Amended Complaint, Exhibit No. 1-LLLL.

[fol. 210]

8.

Respondent excepts to the Intermediate Report for the reason that the essential findings of fact, conclusions of law, and recommendations, therein contained, adverse to respondent, are not the result of the exercise of a judicial consideration of material and relevant facts in evidence but are the result of partisanship, prejudice, abuse of discretion, and a complete disregard of the evidence; and such findings, conclusions and recommendations are arbitrary, capricious, oppressive and contrary to the law and the evidence.

9.

Respondent excepts to the Intermediate Report for the reason that the recommendations therein purport to be based upon findings of fact and conclusions of law which constitute neither findings of fact nor conclusions of law but an intermingling of argument, conjecture, unfair and unreasonable inferences, suspicion, surmise, and immaterial and irrelevant evidence.

10.

Respondent excepts to the Intermediate Report for the reason that the essential findings therein contained, adverse to respondent, are based on purported evidence which is irrelevant, immaterial and insufficient as a basis for such findings, and on purported facts and circumstances which could not legally support a decision of the Board adverse to respondent.

11.

Respondent excepts to the Intermediate Report for the reason that the essential findings therein contained, adverse to the respondent, are based on purported evidence which is incompetent as a basis for such report or the findings, conclusions, or recommendations contained therein.

[fol. 211]

12.

Respondent excepts to the Intermediate Report for the reason that each and every finding of fact adverse to respondent, and the conclusions and recommendations purported to be based thereon, is contrary to the law and the evidence, beyond the pleadings, the scope thereof, and the issues made thereby, and neither relevant nor germane thereto.

13.

Respondent excepts to the Intermediate Report for the reason that the Trial Examiner consistently disregarded the obligation to weigh and consider all the evidence, and ignored the legal doctrine that the burden of proof was cast upon the Board to establish the charges as alleged by a fair preponderance of the evidence.

14.

Respondent excepts to the Intermediate Report for the reason that said report and the several findings of fact and conclusions therein contained are without support in the evidence and could not lawfully influence or sustain a decision by the Board in conformity with the said report.

15.

Respondent excepts to the Intermediate Report for the reason that the findings of fact, adverse to respondent, and the conclusions and recommendations purported to be based thereon, are based wholly or substantially upon alleged acts occurring prior to July 5, 1935, with the result that respondent is convicted of violation of the National Labor Relations Act by reason of alleged acts occurring prior to the effective date thereof; and, which, if they occurred, were in all respects lawful and innocent.

[fol. 212]

16.

Respondent excepts to the Intermediate Report for the reason that the Trial Examiner held respondent to be bound by the alleged acts, omissions and declarations of employees, although no authority was shown for such alleged acts, omissions or declarations and the latter were not shown to be in the course or within the scope of any employment by respondent and the undisputed evidence negated such authority and such course and scope.

17.

Respondent excepts to the Intermediate Report for the reason that the Trial Examiner held respondent to be bound by the alleged acts, omissions and declarations of instructors and other employees, although the undisputed evidence disclosed that instructors had no authority to hire, discipline or discharge, were not supervisory employees, and were not authorized to commit the alleged acts, omissions or declarations, and the said alleged acts, omissions or declarations were not shown to be in the course of or within the scope of their employment, nor in any way binding upon respondent.

18.

Respondent excepts to the Intermediate Report and to the several findings of fact and conclusions of the Trial Examiner contained therein adverse to respondent, because the Trial Examiner has failed to find and conclude that the respondent has not dominated or interfered with the formation and administration of the Donnelly Garment Workers' Union and has not contributed support to said Union and has failed to find and conclude that the respondent did not discriminate against the International Ladies Garment Workers' Union or its members or discourage membership therein, and has failed to find and conclude that respondent did not interfere with, restrain or coerce its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, and has failed to find and conclude that the respondent did not dominate, control, interfere with, or act through the Donnelly Loyalty League in any way, and has failed to find

and conclude that the Donnelly Garment Workers' Union was not a successor, of, or connected with, the Donnelly Loyalty League, and that the Donnelly Loyalty League did not dominate or interfere in the formation or administration of the Donnelly Garment Workers' Union, and has failed to find and conclude that respondent is not guilty of any of the unfair labor practices charged in the amended complaint and has failed to dismiss or recommend the dismissal of each and all of said charges against respondent, and because the Trial Examiner has failed to find, state or consider material, relevant and uncontradicted facts and evidence favorable to respondent and pertinent to the findings and conclusions made by the Trial Examiner, but has based his said findings and conclusions on incompetent and detached portions of the evidence deemed by the Examiner to be unfavorable to the respondent, and upon conjecture and improper inferences not warranted by the evidence.

19.

Respondent excepts to the Intermediate Report and to the several findings of fact, conclusions and recommendations therein contained adverse to respondent for the reason that the evidence and offers of proof herein (including the testimony of offered testimony of every member of the Donnelly Garment Workers' Union) show that the Donnelly Garment Workers' Union was formed and joined by one hundred per cent of the working employees of respondent of their own free will and accord without any influence, domination, coercion or interference by respondent, and that they voluntarily chose said Union and its Executive Committee to represent them for the purpose of collective bargaining with respondent and have at all times desired to be so represented, and all the direct evidence was to the effect that none of respondent's executives or supervisory employees with power to hire, discharge or discipline, attempted to dominate, coerce, restrain or interfere in any way with respondent's employees in regard to their union membership or affiliations, and the findings and conclusions of the Trial Examiner that respondent has violated Sections 8 (1), 8 (2), 8 (3) of the National Labor Relations Act are made in the face of this uncontradicted showing, and said findings, conclusions and

recommendations of the Trial Examiner are contrary to the letter and spirit of the National Labor Relations Act in that they deny to respondent's employees the right to bargain with respondent through representatives of their own choosing and require the violation by respondent of the National Labor Relations Act by refusing to bargain with the representatives of a majority of its employees, and if said conclusions and recommendations are upheld by the Board, the Board, instead of endorsing the Act, will be in the position of violating, and requiring the respondent to violate, both the letter and the spirit of the Act.

20.

Respondent excepts to the findings of the Trial Examiner and each of them because said Examiner and/or the National Labor Relations Board did not investigate and certify, although so requested, the exclusive representatives of all of respondent's employees for the purposes of collective bargaining in accordance with Section 9, subsection c of the National Labor Relations Act prior to the institution and/or hearing of the present proceedings.

21.

[fol. 215] Respondent excepts to the conclusions of the Trial Examiner and each of them because said Examiner and/or the National Labor Relations Board did not investigate and certify, although so requested, the exclusive representatives of all of respondent's employees for the purposes of collective bargaining in accordance with Section 9, subsection c of the National Labor Relations Act prior to the institution and/or hearing of the present proceedings.

22.

Respondent excepts to the recommendations of the Trial Examiner and each of them because said Examiner and/or the National Labor Relations Board did not investigate and certify, although so requested, the exclusive representatives of all of respondent's employees for the purposes of collective bargaining in accordance with Section 9, subsection c of the National Labor Relations Act prior to the institution and/or hearing of the present proceedings.

23.

Respondent excepts to the findings of the Trial Examiner and each of them because the said findings are the result of an illegal, partisan and unfair proceeding in violation of the rights secured to respondent under the Fifth Amendment to the Constitution of the United States.

24.

Respondent excepts to the conclusions of the Trial Examiner and each of them because the said conclusions are the result of an illegal, partisan and unfair proceeding in violation of the rights secured to respondent under the Fifth Amendment to the Constitution of the United States.

25.

[fol. 216] Respondent excepts to the recommendations of the Trial Examiner and each of them because the said recommendations are the result of an illegal, partisan, and unfair proceeding in violation of the rights secured to respondent under the Fifth Amendment to the Constitution of the United States.

26.

Respondent excepts to the Intermediate Report and to the several findings, conclusions and recommendations therein, for the reason that the evidence is so overwhelmingly contrary to most of said findings and to all of said conclusions, as to show that the Trial Examiner either did not consider all the evidence or was so biased and prejudiced against respondent that he intended to and did make his findings, conclusions and recommendations against respondent notwithstanding that he knew that same were contrary to the overwhelming weight of the evidence, whereby, in either event, respondent has been and is denied a fair hearing herein and deprived of its liberty and property without due process of law, in contravention of the provisions of the Constitution of the United States.

27.

Respondent excepts to the several findings and conclusions of the Trial Examiner, for the reason that it is the duty and obligation of the Board to prove its charges by a

fair preponderance of the evidence and is the duty of the Trial Examiner (and the Board) to make findings based on a fair preponderance of the evidence and the Trial Examiner has violated his duty in this respect and has made essential findings which are not only not supported or proved by a fair preponderance of the evidence but are wholly contrary to the overwhelming weight of the evidence.

28.

[fol. 217] Respondent excepts to the Intermediate Report and to the several findings, conclusions and recommendations therein, for the reason that the Trial Examiner's references therein to the testimony in most instances are so vague and uncertain that the respondent and the Board cannot determine upon what evidence the Trial Examiner is basing his said findings and conclusions and cannot determine what evidence was in the mind of the Trial Examiner, whereby respondent is and will be deprived of a fair trial and review herein.

29.

Respondent excepts to the Intermediate Report and to the failure and refusal [to] the trial Examiner to dismiss the Amended Complaint herein, for the reason that the Amended Complaint is not authorized by the amended charge upon which it purports to be based.

30.

Respondent excepts to the Intermediate Report of the Trial Examiner and to the finding, statement and conclusion therein contained on page 2 that "full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties" at the hearing held beginning June 5 and ending July 15, 1939, for the reason that same is not supported by the record, but on the contrary the record shows that respondent was repeatedly wrongfully denied opportunity to be heard and to examine and cross-examine witnesses and to introduce evidence bearing on the issues and that the intervener Donnelly Garment Workers' Union was likewise denied such rights and opportunity, whereby respondent was denied a fair trial herein.

31.

[fol. 218] Respondent excepts to the Intermediate Report and to the finding, statement and conclusion contained therein at page 8 that "full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all of the parties" at the hearing held beginning July 6 and ending September 17, 1942, for the reason that same is not supported by the record, but on the contrary the record shows that respondent was repeatedly wrongfully denied opportunity to be heard and to examine and cross-examine witnesses and to introduce evidence bearing on the issues and that the intervener Donnelly Garment Workers' Union was likewise denied such rights and opportunity, whereby respondent was denied a fair trial herein.

32.

Respondent excepts to the Intermediate Report and to the findings, statements and conclusions contained therein on pages 9 and 10 that "the undersigned accorded the respondent and the D.G.W.U. an opportunity to introduce all of the competent and material evidence which was rejected at the prior hearing and permitted Nell Quinlan Reed, the respondent's president, * * * to testify in the further hearing upon all the issues set forth in the pleadings", for the reason that said findings, statements and conclusions are not supported by the record, but on the contrary the record shows that the respondent and the intervener Donnelly Garment Workers' Union were repeatedly wrongfully denied the opportunity and right to introduce competent and material evidence rejected at the prior hearing, and that the Trial Examiner refused to permit Nell Quinlan Reed to testify at the hearing beginning July 6, 1942 and ending September 17, 1942 upon many of the issues set forth in the pleadings and in addition thereto, struck out, over the objection of respondent, a large part of the testimony of said witness after same had been given, whereby respondent was denied a fair trial.

33.

Respondent excepts to the Intermediate Report and to the finding, statement and conclusion contained therein on

Page 10, that "International Ladies' Garment Workers' Union, affiliated with American Federation of Labor, is a labor organization admitting to membership the factory employees of the respondent"; for the reason that same is not supported by the evidence or the record herein.

34.

Respondent excepts to the finding, statement and conclusion of the Trial Examiner contained on page 10 of the Intermediate Report, that the Donnelly Garment Workers' Union "admits to membership all employees of the respondent"; for the reason that same is not supported by the evidence or the record herein.

35.

Respondent excepts to the Intermediate Report and to the findings, statements and conclusions contained in Part III, A, thereof under the heading "Respondent's responsibility for the activities of various employees" and the subheadings numbered 1, 2, 3 and 4, appearing at pages 11 to 17 inclusive of the Intermediate Report, including the footnotes, and particularly those contained in the following portions thereof, to wit:

[fol. 220] The first paragraph under subheading "1. Instructors and thread girls" except the last two sentences thereof, page 11; the last sentence in the second paragraph under said subheading 1, p. 11; the footnote numbered 17 beginning at the bottom of page 11 and ending on page 12; the second and third paragraphs on page 12 of the Intermediate Report and footnote 18; the last paragraph beginning on page 12 and continuing on page 13; the first full paragraph on page 13 and the first two sentences of footnote 19 on page 13; the last paragraph beginning on page 13 and ending on page 14 and the first sentence of footnote 20 on page 14; the first paragraph under subheading "2. Rose Todd" except the third sentence thereof, p. 14; the second paragraph under said subheading 2 beginning on page 14 and ending on page 15 except the statement therein that "she left her employment with the respondent in 1931 and for about 1 year worked for the Gernes Garment Company" and excepting the last sentence of said paragraph; the first paragraph beginning on page 15; the sec-

and paragraph beginning on page 15; the third paragraph beginning on page 15; the last paragraph beginning on page 15 and ending on page 16; the first paragraph beginning on page 16, being the last paragraph of said subheading 2; the following portions of the first paragraph under subheading "3. Hobart Atherton" beginning on page 16 and ending on page 17, to wit, the third sentence and the last two sentences thereof; the last paragraph under said subheading 3, being the first paragraph beginning on page 17, and footnote 23; the first paragraph under subheading "4. Other supervisory employees" on page 17; the second paragraph under said subheading 4, being the last [fol. 221] paragraph under said subheading, and footnote 24 (p. 17);

for each and all of the following reasons, to-wit:

Because said findings, statements and conclusions and portions thereof, and each of same, do not show or support a finding or conclusion, that the instructors, Rose Todd, Hobart Atherton or the various employees referred to in subparagraph 4, p. 17, or any of them, were supervisory employees of respondent or represented "the management" or were acting for or in behalf of the management with respect to the formation of the Donnelly Garment Workers' Union or with respect to any of the matters referred to in said Part III, A, or that respondent held said employees, or any of them, out to its employees as representatives of the management or as acting for the management with respect to any of such matters, or that the employees regarded or had reason to regard said employees or any of them as representatives of the management or as acting on behalf of the management with respect to any of such matters, or occupied a close or confidential position with respondent, or that said alleged supervisory employees exerted any pressure or coercion on the employees or interfered in any way with their free choice of labor affiliations or that respondent's employees were coerced, influenced or interfered with by any of said alleged supervisory employees with respect to any of said matters, because said findings, statements and conclusions, and portions thereof, and each of same, are not supported by the evidence; are immaterial and irrelevant and do not, by inference or otherwise, prove or tend to prove any of

the charges against respondent or support any of the Trial Examiner's conclusions or recommendations adverse to respondent, and are insufficient in law and in fact [fol. 222] therefor; are based on incompetent, irrelevant and immaterial evidence; are not supported by the alleged evidence therein set forth or referred to, either alone or in conjunction with other evidence or by any reasonable inferences therefrom, but are contrary to the evidence; do not fairly state the evidence, and show that the Trial Examiner failed to consider relevant evidence pertaining to said matters; are biased, arbitrary and capricious, conjectural and speculative, consisting of mere inference or surmise, and not based on any substantial, competent evidence; do not support a finding or conclusion that the respondent was or is guilty of any unlawful labor practice or of any of the charges alleged in the complaint; show and are the result of the bias and prejudice of the Trial Examiner against respondent and his non-judicial attitude toward the evidence; because the Trial Examiner in said Intermediate Report has misstated and distorted the evidence, and the true meaning thereof for the purpose of making same appear adverse to respondent; because respondent is not responsible for said alleged facts, findings and statements or any of them or any adverse inferences, if any, drawn or to be drawn therefrom and same are not binding on respondent; and because respondent has, for each and all of the foregoing reasons, been denied a fair trial:

36.

Respondent excepts to the Intermediate Report and to each and all the findings, statements and conclusions contained in Part III, B, thereof (pages 17-20 incl.) under the heading "Events prior to the effective date of the Act", for the reason that same and each of same are irrelevant and immaterial to any of the issues herein, are based upon alleged acts alleged to have occurred prior to the passage [fol. 223] of the National Labor Relations Act, make said Act an ex post facto law, and give a retroactive effect thereto, constitute the basis for the findings against respondent and a conviction of respondent for acts found to have been done when same were not prohibited by said Act or any other law, whereby respondent is denied due

process of law and a fair trial in contravention of the Constitution of the United States and the law of the land.

Respondent further excepts to the findings, statements and conclusions contained in Part III, B, of the Intermediate Report and particularly those contained in the following portions thereof, to-wit:

The last three sentences of the first paragraph thereof, page 17; the second paragraph thereof, being the first paragraph on page 18; the second paragraph on page 18; the third paragraph on page 18, except the second sentence and the last two sentences thereof; the fourth paragraph on page 18, excepting the last sentence thereof; the last paragraph on page 18; the first paragraph on page 19, except the statement of the quotation contained in the two indented paragraphs in the middle thereof; the last paragraph on page 19; the first paragraph on page 20 and the first sentence of footnote 28; the last two sentences of the second paragraph on page 20; the third paragraph on page 20; the fourth paragraph being the last paragraph on page 20;

for each and all of the following reasons, to-wit:

Because said findings, statements and conclusions and portions thereof, and each of same, are not supported by the evidence; or by any findings supported by the evidence; [fol. 224] are immaterial and irrelevant and do not, by inference or otherwise, prove or tend to prove any of the charges against respondent or support any of the Trial Examiner's conclusions or recommendations adverse to respondent, and are insufficient in law and in fact therefor; are based on incompetent, irrelevant and immaterial evidence; are not supported by the alleged evidence therein set forth or referred to, either alone or in conjunction with other evidence or by any reasonable inferences therefrom, but are contrary to the evidence; do not fairly state the evidence, and show that the Trial Examiner failed to consider relevant evidence pertaining to said matters; are biased, arbitrary and capricious, conjectural and speculative, consisting of mere inference or surmise, and not based on any substantial, competent evidence; do not support a finding or conclusion that the respondent was or is guilty of any unlawful labor practice or of any of the

charges alleged in the complaint; show and are the result of the bias and prejudice of the Trial Examiner against respondent and his non-judicial attitude toward the evidence; because the Trial Examiner in said Intermediate Report has misstated and distorted the evidence and the true meaning thereof for the purpose of making same appear adverse to respondent; because respondent is not responsible for said alleged facts, findings and statements or any of them or any adverse inferences, if any, drawn or to be drawn therefrom and same are not binding on respondent; and because respondent has, for each and all of the foregoing reasons, been denied a fair trial.

[fol. 225]

37.

Respondent excepts to the Intermediate Report and to each and all the findings, statements and conclusions contained in Part III, C, thereof (pages 21 to 25 incl.) under the heading "Events prior to April 27, 1937; interference, restraint, and coercion", particularly those contained in the following portions thereof, to-wit:

The first, second and fourth sentences of the first paragraph on page 21; the second sentence and the last sentence of the third paragraph from the bottom on page 21; the second sentence of the second paragraph from the bottom on page 21; the last paragraph on page 21 and concluding on page 22; the first full paragraph on page 22, and footnote 32 on said page; the last paragraph beginning on page 22 and concluding on page 23, and footnote 33 except the first sentence thereof; the first full paragraph beginning on page 23 and concluded on page 24, except the following portion thereof, to-wit, "Mrs. Reed further told the employees that she had 'had lots of nice things happen to me in my lifetime but I have never had anything that made me so proud and so happy' as the receipt of the 'loyalty' pledge in which the employees unanimously agreed to refuse to acknowledge any union labor organization. While Mrs. Reed sought to appear as a disinterested defender of the respondent's employees in the exercise of their right to join or not to join a labor organization, * * *"; the first full paragraph beginning on page

24; the fifth, sixth, seventh, eighth, eleventh, thirteenth, fourteenth and fifteenth sentences of the last full paragraph beginning on page 24 and concluded on page 25, and footnote 36, except the first sentence thereof; the word [fol. 226] "subjected" in the first sentence of the first full paragraph on page 25 and the remainder of said paragraph; the second full paragraph on page 25; the last paragraph on page 25 and footnote 39 except the first sentence of said footnote;

for each and all of the following reasons, to-wit:

Because said findings, statements and conclusions and portions thereof, and each of same, are not supported by the evidence or by any findings supported by the evidence; are immaterial and irrelevant and do not, by inference or otherwise, prove or tend to prove any of the charges against respondent or support any of the Trial Examiner's conclusions or recommendations adverse to respondent, and are insufficient in law and in fact therefor; are based on incompetent, irrelevant and immaterial evidence; are not supported by the alleged evidence therein set forth or referred to, either alone or in conjunction with other evidence or by any reasonable inferences therefrom, but are contrary to the evidence; do not fairly state the evidence, and show that the Trial Examiner failed to consider relevant evidence pertaining to said matters; are biased, arbitrary and capricious, conjectural and speculative, consisting of mere inferences or surmise, and not based on any substantial, competent evidence; do not support a finding or conclusion that the respondent was or is guilty of any unlawful labor practice or of any of the charges alleged in the complaint; show and are the result of the bias and prejudice of the Trial Examiner against respondent and his non-judicial attitude toward the evidence; because the Trial Examiner in said Intermediate Report has misstated and distorted the evidence and the true meaning thereof for the purpose of making same appear adverse to respondent; because respondent is not responsible for said alleged facts, findings and statements [fol. 227] or any of them or any adverse inferences, if any, drawn or to be drawn therefrom and same are not binding on respondent; and because respondent has, for each and all of the foregoing reasons, been denied a fair trial.

Respondent excepts to the Intermediate Report and to each and all the findings, statements and conclusions contained in Part III, D, under the heading "Domination and interference with the formation and administration of the D.G.W.U. and contribution of support; interference, restraint, and coercion", and to subheading "1. The formation of the D.G.W.U." (pages 26 to 28 incl.), and particularly those contained in the following portions thereof, to-wit:

The first sentence of the first paragraph on page 26; the second paragraph on page 26; the third paragraph beginning on page 26 and concluded on page 27, except the first sentence thereof; footnote 42 on page 26; the statement in the first full paragraph beginning on page 27 and concluded on page 28 that it was decided and voted to form the D.G.W.U. "without any discussion"; footnote 43 except the first sentence thereof; the first full paragraph beginning on page 28, being the only paragraph on said page; the following portions of footnote 44: the second, third, fourth, seventh and last sentences of said footnote 44;

for each and all of the following reasons, to-wit:

Because said findings, statements and conclusions and portions thereof, and each of same, are not supported by the evidence or by any findings supported by the evidence; are immaterial and irrelevant and do not, by inference or otherwise, prove or tend to prove any of the charges [fol. 228] against respondent or support any of the Trial Examiner's conclusions or recommendations adverse to respondent, and are insufficient in law and in fact therefor; are based on incompetent, irrelevant and immaterial evidence; are not supported by the alleged evidence therein set forth or referred to, either alone or in conjunction with other evidence or by any reasonable inferences therefrom, but are contrary to the evidence; do not fairly state the evidence, and show that the Trial Examiner failed to consider relevant evidence pertaining to said matters; are biased, arbitrary and capricious, conjectural and speculative, consisting of mere inferences or surmise, and not based on any substantial, competent evidence; do not

support a finding or conclusion that the respondent was or is guilty of any unlawful labor practice or of any of the charges alleged in the complaint; show and are the result of the bias and prejudice of the Trial Examiner against respondent and his non-judicial attitude toward the evidence; because the Trial Examiner in said Intermediate Report has misstated and distorted the evidence and the true meaning thereof for the purpose of making same appear adverse to respondent; because respondent is not responsible for said alleged facts, findings and statements or any of them or any adverse inferences, if any, drawn or to be drawn therefrom and same are not binding on respondent; and because respondent has, for each and all of the foregoing reasons, been denied a fair trial.

39.

[fol. 229] Respondent excepts to the Intermediate Report and to each and all the findings, statements and conclusions contained in Part III, D, thereof, under the subheading "2. Membership and participation by other supervisors in the D.G.W.U." thereof, (pages 29 to 30 incl.), and particularly those contained in the following portions thereof, to wit:

The first three sentences of the first paragraph on page 29, and footnote 45 on said page; the first full paragraph on page 30; the second full paragraph on page 30; the last paragraph on page 30 under said subheading;

for each and all of the following reasons, to wit:

Because said findings, statements and conclusions and portions thereof, and each of same, are not supported by the evidence or by any findings supported by the evidence; are immaterial and irrelevant and do not, by inference or otherwise, prove or tend to prove any of the charges against respondent or support any of the Trial Examiner's conclusions or recommendations adverse to respondent, and are insufficient in law and in fact therefor; are based on incompetent, irrelevant and immaterial evidence; are not supported by the alleged evidence therein set forth or referred to, either alone or in conjunction with other evidence or by any reasonable inferences therefrom, but are contrary to the evidence; do not fairly state the evidence,

and show that the Trial Examiner failed to consider relevant evidence pertaining to said matters; are biased, arbitrary and capricious, conjectural and speculative, consisting of mere inferences or surmises, and not based on any substantial, competent evidence; do not support a finding or conclusion that the respondent was or is guilty of any unlawful labor practice or of any of the charges alleged in the complaint; show and are the result of the bias and prejudice of the Trial Examiner against respondent and his non-judicial attitude toward the evidence; because the Trial Examiner in said Intermediate Report has misstated and distorted the evidence and the true meaning thereof for the purpose of making same appear adverse to respondent; because respondent is not responsible for said alleged facts, findings and statements or any of them or any adverse inferences, if any, drawn or to be drawn therefrom and same are not binding on respondent; and because respondent has, for each and all of the foregoing reasons, been denied a fair trial.

40.

Respondent excepts to the Intermediate Report and to each and all of the findings, statements and conclusions contained in Part III, D, thereof, under the subheading "3. The contracts; closed-shop, check-off and piece-work rates" thereof, (pages 30 to 32 incl.), and particularly those contained in the following portions thereof, to-wit:

The statements, findings and conclusions in the third paragraph beginning on page 31, that the contract prepared by Tyler "was accepted by the respondent without substantial change"; that the terms of the supplemental agreement were not submitted to the D.G.W.U. membership for approval before or after its execution; and that Rose Todd thought it a good idea to improve a little on the minimum of \$16.00 "to defeat efforts of the I.L.G.W.U. to organize the respondent's employees"; the last paragraph beginning on page 31 and concluded on page 32, except the first two sentences thereof; the fourth sentence of the first full paragraph beginning [fol. 231] on page 32; the last two paragraphs on page 32;

for each and all of the following reasons, to-wit:

Because said findings, statements and conclusions and portions thereof, and each of same, are not supported by the evidence or by any findings supported by the evidence; are immaterial and irrelevant and do not, by inference or otherwise, prove or tend to prove any of the charges against respondent or support any of the Trial Examiner's conclusions or recommendations adverse to respondent, and are insufficient in law and in fact therefor; are based on incompetent, irrelevant and immaterial evidence; are not supported by the alleged evidence therein set forth or referred to, either alone or in conjunction with other evidence or by any reasonable inferences therefrom but are contrary to the evidence; do not fairly state the evidence, and show that the Trial Examiner failed to consider relevant evidence pertaining to said matters; are biased, arbitrary and capricious, conjectural and speculative, consisting of mere inferences or surmise, and not based on any substantial, competent evidence; do not support a finding or conclusion that the respondent was or is guilty of any unlawful labor practice or of any of the charges alleged in the complaint; show and are the result of the bias and prejudice of the Trial Examiner against respondent and his non-judicial attitude toward the evidence; because the Trial Examiner in said Intermediate Report has misstated and distorted the evidence and the true meaning thereof for the purpose of making same appear adverse to respondent; because respondent is not responsible for said alleged facts, findings and statements or any of them or any adverse inferences, if any, drawn or to be drawn therefrom and same are not binding on respondent, and because respondent has, for each and all of the foregoing reasons, been denied a fair trial.

41.

[fol. 232] Respondent excepts to the Intermediate Report and to each and all the findings, statements and conclusions contained in Part III, D, under the subheading "Respondent's contribution of support to the D.G.W. U." thereof (pages 33 to 35 incl.), and particularly those contained in the following portions thereof, to wit:

The first paragraph on page 33, except the second, third and fourth sentences thereof, and footnote 49; the sec-

ond paragraph on page 33; the first paragraph on page 34; the second paragraph on page 34; the third paragraph on page 34; the fourth paragraph on page 34; the last paragraph of said subheading 4, appearing on page 35;

for each and all of the following reasons, to wit:

Because said findings, statements and conclusions and portions thereof, and each of same, are not supported by the evidence or by any findings supported by the evidence; are immaterial and irrelevant and do not, by inference or otherwise, prove or tend to prove any of the charges against respondent or support any of the Trial Examiner's conclusions or recommendations adverse to respondent, and are insufficient in law and in fact therefor; are based on incompetent, irrelevant and immaterial evidence; are not supported by the alleged evidence therein set forth or referred to, either alone or in conjunction with other evidence or by any reasonable inferences therefrom, but are contrary to the evidence; do not fairly state the evidence, and show that the Trial Examiner failed to consider relevant evidence pertaining to said matters; are biased, arbitrary and capricious, conjectural and speculative, consisting of mere inferences or surmise, and not based on any substantial, competent evidence; do not support a finding or conclusion that the respondent was or is guilty of any unlawful labor practice or of any of the charges alleged in the complaint; show and are the result of the bias and prejudice of the Trial Examiner against respondent and his non-judicial attitude toward the evidence; because the Trial Examiner in said Intermediate Report has misstated and distorted the evidence and the true meaning thereof for the purpose of making same appear adverse to respondent; because respondent is not responsible for said alleged facts, findings and statements or any of them or any adverse inferences, if any, drawn or to be drawn therefrom and same are not binding on respondent; and because respondent has, for each and all of the foregoing reasons, been denied a fair trial.

Respondent excepts to the Intermediate Report and to each and all the findings, statements and conclusions con-

tained in and under the heading "Summary and conclusions" beginning on page 35 and ending on page 37, for each and all of the following reasons, to wit:

Because said findings, statements and conclusions and portions thereof, and each of same, are not supported by the evidence or by any findings supported by the evidence; are immaterial and irrelevant and do not, by inference or otherwise, prove or tend to prove any of the charges against respondent or support any of the Trial Examiner's conclusions or recommendations adverse to respondent, and are insufficient in law and in fact therefor; are based on incompetent, irrelevant and immaterial evidence; are not supported by the alleged evidence therein set forth or referred to, either alone or in conjunction with other evidence or by any reasonable inferences therefrom, but [fol. 234] are contrary to the evidence; do not fairly state the evidence, and show that the Trial Examiner failed to consider relevant evidence pertaining to said matters; are biased, arbitrary and capricious, conjectural and speculative, consisting of mere inferences or surmise, and not based on any substantial, competent evidence; do not support a finding or conclusion that the respondent was or is guilty of any unlawful labor practice or of any of the charges alleged in the complaint; show and are the result of the bias and prejudice of the Trial Examiner against respondent and his non-judicial attitude toward the evidence; because the Trial Examiner in said Intermediate Report has misstated and distorted the evidence and the true meaning thereof for the purpose of making same appear adverse to respondent; because respondent is not responsible for said alleged facts, findings and statements or any of them or any adverse inferences, if any, drawn or to be drawn therefrom and same are not binding on respondent; and because respondent has, for each and all of the foregoing reasons, been denied a fair trial.

43.

Respondent excepts to the Intermediate Report and to each and all of the findings, statements and conclusions contained in Part III, E, under the heading "The alleged discharges," beginning on page 37 and ending on page 39, and particularly those contained in the following portions thereof, to wit:

The first five sentences of the third paragraph thereof on page 37; the fourth paragraph thereof on page 37, except the first sentence of said fourth paragraph; the fifth paragraph thereof being the last paragraph beginning on page 37 and concluded on page 38, except the last sentence thereof; the second full paragraph thereof be- [fol. 235] ginning on page 38, except the last sentence thereof;

for each and all of the following reasons, to wit:

Because said findings, statements and conclusions and portions thereof, and each of same, are not supported by the evidence or by any findings supported by the evidence; are immaterial and irrelevant and do not, by inference or otherwise, prove or tend to prove any of the charges against respondent or support any of the Trial Examiner's conclusions or recommendations adverse to respondent, and are insufficient in law and in fact therefor; are based on incompetent, irrelevant and immaterial evidence; are not supported by the alleged evidence therein set forth or referred to, either alone or in conjunction with other evidence or by any reasonable inferences therefrom, but are contrary to the evidence; do not fairly state the evidence, and show that the Trial Examiner failed to consider relevant evidence pertaining to said matters; are biased, arbitrary and capricious, conjectural and speculative, consisting of mere inferences or surmise, and not based on any substantial, competent evidence; do not support a finding or conclusion that the respondent was or is guilty of any unlawful labor practice or of any of the charges alleged in the complaint; show and are the result of the bias and prejudice of the Trial Examiner against respondent and his non-judicial attitude toward the evidence; because the Trial Examiner in said Intermediate Report has misstated and distorted the evidence and the true meaning thereof for the purpose of making same appear adverse to respondent; because respondent is not responsible for said alleged facts, findings and statements or any of them or any adverse inferences, if any, drawn or to be drawn therefrom and same are not binding on respondent; and because respondent has, for each and all of the foregoing reasons, been denied a fair trial.

[fol. 236] Respondent excepts to the Intermediate Report and to the findings, statements and conclusions contained in Part IV thereof, on page 39, under the heading "The effect of the unfair labor practices upon commerce," that respondent engaged in the activities set forth in Section III of the Intermediate Report, for the reason that same are not supported by the evidence or by any inferences to be drawn therefrom; and for each and all the reasons heretofore set forth under respondent's exceptions to the findings, statements and conclusions set forth in said Section III. Respondent does not dispute that it was engaged in interstate commerce as set forth in the stipulation concerning said matter filed in this proceeding.

Respondent excepts to the Intermediate Report and to each and all the findings, statements and conclusions contained in Part V thereof, under the heading "The remedy," beginning on page 39 and ending on page 40, and particularly those contained in the following portions thereof, to wit:

The first, second, third and fifth paragraphs thereof; for each and all the following reasons, to wit:

Because said findings, statements and conclusions and portions thereof, and each of same, are not in accordance with the purposes and provisions of the National Labor Relations Act, but are contrary thereto, and because same are not conclusive to effectuate the policies and purposes of said Act but have the contrary effect; because they are not supported or justified by the evidence or by any findings supported by the evidence; are immaterial and irrelevant [fol. 237] and do not, by inference or otherwise, prove or tend to prove any of the charges against respondent or support any of the Trial Examiner's conclusions or recommendations adverse to respondent, and are insufficient in law and in fact therefor; are based on incompetent, irrelevant and immaterial evidence; are not supported by the alleged evidence therein set forth or referred to, either alone or in conjunction with other evidence or by any reasonable inferences therefrom, but are contrary to the

evidence; do not fairly state the evidence, and show that the Trial Examiner failed to consider relevant evidence pertaining to said matters; are biased, arbitrary and capricious, conjectural and speculative, consisting of mere inferences or surmises, and not based on any substantial, competent evidence; do not support a finding or conclusion that the respondent was or is guilty of any unlawful labor practice or of any of the charges alleged in the complaint; show and are the result of the bias and prejudice of the Trial Examiner against respondent and his non-judicial attitude toward the evidence; because the Trial Examiner in said Intermediate Report has misstated and distorted the evidence and the true meaning thereof for the purpose of making same appear adverse to respondent; because respondent is not responsible for said alleged facts, findings and statements or any of them or any adverse inferences, if any, drawn or to be drawn therefrom and same are not binding on respondent; and because respondent has, for each and all of the foregoing reasons, been denied a fair trial.

46.

[fol. 238] Respondent excepts to the Intermediate Report and to each and all the findings, statements and conclusions contained and set forth in the first five paragraphs under the heading "Conclusions of Law" on page 41, for the following reasons, to wit:

Respondent excepts to the conclusions contained in paragraph "1" of said Conclusions of Law, for the reason that the conclusion that the International Ladies' Garment Workers' Union is a labor organization within the meaning of Section 2 (5) of the Act, is not supported by the evidence.

Respondent excepts to each and all the findings, statements and conclusions contained in each of said paragraphs numbered 2, 3, 4, and 5, under the heading "Conclusions of Law" on page 41 of the Intermediate Report, for each and all of the following reasons, to wit:

1. Because the evidence does not show that the respondent has engaged in, or is engaging in, any of the unfair labor practices referred to in said paragraphs and each of same:

2. Because same are contrary to the evidence and contrary to the law under the evidence.

3. Because same are not supported or justified by the evidence or any inferences which may be properly drawn therefrom, or by any findings of fact by the Trial Examiner which are supported by the evidence or any reasonable inferences to be drawn therefrom.

4. Because same are not supported or justified by the findings of fact or any inferences which may be properly drawn therefrom.

[fol. 239] 5. Because same are partisan, biased, arbitrary, conjectural and speculative, and are not based on all the evidence or upon a fair consideration of the evidence.

6. Because same are based on conjecture, surmise and improper inferences and on incompetent, irrelevant and immaterial evidence and upon findings of fact not supported by the evidence.

7. Because the findings of fact upon which same are based are not supported by the evidence; and because the findings of fact are insufficient in law and in fact to support or justify said conclusions, for all the reasons hereinabove set forth in the respondent's exceptions to said several findings of fact.

8. Because there is an absence of evidence in the record to justify said conclusions or any of them, or to justify a finding or order of the National Labor Relations Board in accordance with said conclusions.

9. Because the evidence does not show that the respondent has violated the provisions of the National Labor Relations Act therein referred to.

10. Because said conclusions and determinations deprive respondent of its property without due process of law in contravention of the Fifth Amendment to the Constitution of the United States.

11. Because said conclusions are based upon a hearing in which, and in the conduct of which, respondent was denied a fair trial.

12. Respondent excepts thereto for each and all the reasons hereinabove set forth to the findings of fact on which said conclusions are based.

[fol. 240]

47.

Respondent excepts to the Intermediate Report and to the recommendations and each of same contained and set forth under the heading "Recommendations" and under subparagraphs 1 (a), (b), (c), (d) and (e), on pages 41 and 42, for each and all of the following reasons, to wit:

1. Because said recommendations are not supported or justified by the evidence or any reasonable inference therefrom.

2. Because said recommendations are not supported or justified by the findings of fact or conclusions or any reasonable inferences therefrom made by the Trial Examiner.

3. Because said recommendations are contrary to the evidence and to the law under the evidence.

4. Because said recommendations are based upon the findings of fact and conclusions of the Trial Examiner in said Intermediate Report, which findings of fact and conclusions are in turn not supported or justified by the evidence or any reasonable inferences therefrom.

5. Because under the law and the evidence respondent should not be required or ordered to cease and desist from doing the acts and things enumerated in said recommendations of the Trial Examiner.

6. Because said recommendations or any order based upon same would deprive respondent of its liberty and property without due process of law in contravention of the Fifthth Amendment to the Constitution of the United States.

7. Because said recommendations are not based on a fair consideration of all the evidence, but are partisan, biased and arbitrary, and are based on conjecture and speculation, inference and surmise, not supported by any substantial competent evidence.

[fol. 241] 8. Because said recommendations are made in utter disregard of the evidence and of the obligation of the Trial Examiner to consider and weigh all the evidence.

9. Because the evidence does not show that the respondent has violated any of the provisions of the National Labor Relations Act.

10. Because there is an absence of evidence in the record to justify said recommendations or any of them, or to justify a finding or order of the National Labor Relations Board in accordance with said recommendations.

11. Because said recommendations and each of same are based upon a hearing in which, and in the conduct of which, respondent has been denied a fair trial.

12. Because said recommendations and each of same are based on incompetent, immaterial and irrelevant evidence.

13. Because said recommendations and each of same are contrary to and thwart the purposes and provisions of the National Labor Relations Act.

14. Because said recommendations and each of same are not conducive to effectuate the purposes and provisions of the National Labor Relations Act and are beyond the power of the Board to impose or require under the facts here existing.

15. Respondent further excepts to said recommendations and each of them for each and all of the reasons hereinabove set forth in its exceptions to the findings of fact and conclusions of the Trial Examiner.

16. Respondent further excepts to each and all of the recommendations contained and set forth in said subparagraphs 1 (a), (b), (c), (d) and (e), because the evidence does not show that the respondent is doing or has done any of the acts or things set forth in said recommendations [fol. 242] and for said reason respondent cannot desist and cease from doing same, and said assumption by the Trial Examiner is erroneous and not supported by the evidence.

● Respondent excepts to the Intermediate Report and to such and all of the recommendations of the Trial Examiner contained and set forth under the heading "Recommendations" and in subparagraphs 2 (a), (b) and (c), except the third paragraph of 2 (c) and the last paragraph of 2 (c), on page 42, for each and all of the following reasons, to wit:

1. Because said recommendations are not supported or justified by the evidence or any reasonable inference therefrom.

2. Because said recommendations are not supported or justified by the findings of fact or conclusions or any reasonable inferences therefrom made by the Trial Examiner.

3. Because said recommendations are contrary to the evidence and to the law under the evidence.

4. Because said recommendations are based upon the findings of fact and conclusions of the Trial Examiner in said Intermediate Report, which findings of fact and conclusions are in turn not supported or justified by the evidence or any reasonable inferences therefrom.

5. Because under the law and the evidence respondent should not be required or ordered to cease and desist from doing the acts and things enumerated in said recommendations of the Trial Examiner.

6. Because said recommendations or any order based upon same would deprive respondent of its liberty and property without due process of law in contravention of the Fifth Amendment to the Constitution of the United States.

[fol. 243] 7. Because said recommendations are not based on a fair consideration of all the evidence, but are partisan, biased and arbitrary, and are based on conjecture and speculation, inference and surmise, not supported by any substantial competent evidence.

8. Because said recommendations are made in utter disregard of the evidence and of the obligation of the Trial Examiner to consider and weigh all the evidence.

9. Because the evidence does not show that the respondent has violated any of the provisions of the National Labor Relations Act.

10. Because there is an absence of evidence in the record to justify said recommendations or any of them, or to justify a finding or order of the National Labor Relations Board in accordance with said recommendations.

11. Because said recommendations and each of same are based upon incompetent, irrelevant and immaterial evidence.

12. Because said recommendations and each of same are contrary to and thwart the purposes and provisions of the National Labor Relations Act.

13. Because said recommendations and each of same are based upon a hearing in which, and in the conduct of which, respondent has been denied a fair trial.

14. Because said recommendations and each of same are not conducive to effectuating the purposes and provisions of the purposes and provisions of the National Labor Relations Act and are beyond the power of the Board to impose or require under the facts here existing.

15. Respondent further excepts to said recommendations and each of them for each and all of the reasons hereinabove set forth in its exceptions to the findings of fact and conclusions of the Trial Examiner.

[fol. 244]

49.

By excepting certain sentences and paragraphs in the foregoing exceptions to the Intermediate Report, respondent does not admit or intend to admit that the statements, findings or conclusions contained in said excepted sentences or paragraphs are true or are supported or justified by the evidence, or that any adverse inferences or implications that may be drawn therefrom are supported or justified by the evidence. The trial examiner, in preparing the Intermediate Report, has so intermingled statements that are supported by the evidence with statements that are not supported by the evidence that it is impossible to separate the true from the false even in single sentences, and the findings and statements in the Intermediate Report often

set forth portions of the evidence which, standing alone, are strictly true, but do not fully or fairly state the whole evidence or the true purport thereof, and the inferences that might be drawn from the portions stated are not and would not be justified by the whole evidence if same had been fairly stated by the trial examiner. For these reasons, respondent excepts to any and all inferences adverse to respondent which are or may be drawn from such partial or unfair statements of the evidence, and does not intend to admit the truth of any of the findings or statements in the Intermediate Report which are adverse to respondent, whether such statements are excepted from the foregoing exceptions or not.

[fol. 245]

50.

Respondent excepts to the action and order of the National Labor Relations Board (contained in Board's Exhibit 1-BBBBB) designating James C. Batten as trial examiner to conduct the further hearing of this case ordered by the Board, and excepts to the action and rulings of the Board and each of same contained and set forth in the Board's order (Board's Exhibit 1-GGGGG) denying respondent's motion (Board's Exhibit 1-CCCCC) for the designation of another trial examiner herein, and excepts to each and all the rulings and action of the Board contained and set forth in Board's order, Exhibit 1-GGGGG, and excepts to the action of the trial examiner, James C. Batten, in continuing to conduct said further hearing over respondent's objections set forth in its said motion, Exhibit 1-CCCCC, and in the affidavit attached thereto, and excepts to the trial examiner's disregard of and failure to sustain respondent's protest and exceptions (Board's Exhibit 1-QQQQQ) to the action, rulings and order of the Board denying respondent's motion for the designation of another trial examiner. These exceptions and each of same are made for each and all of the reasons and grounds set forth in said motion, Exhibit 1-CCCCC, and in the affidavit attached thereto, and for each and all of the reasons set forth in said Exhibit 1-QQQQQ, and for the further reason that by the denial of said motion and by virtue of said James C. Batten con-

tinuing to act as the trial examiner in charge of said further hearing, respondent has been denied a fair and impartial trial herein and same constitutes and has resulted in a denial to respondent of due process of law and respondent is deprived of its liberty and property without due process of law in contravention of the Fifth Amendment to the Constitution of the United States.

[fol. 246]

51.

Respondent excepts to the conducting of said further hearing by said James C. Batten as trial examiner and to his acts and rulings in the conduct thereof for the reason that said James C. Batten became and was biased against respondent in and during the first hearing of this matter, and took a biased and unjudicial attitude toward the evidence and particularly respondent's evidence and proffered evidence, and said bias and prejudice and unjudicial attitude of said trial examiner continued in and throughout the further hearing held herein whereby respondent has been denied a fair trial herein and is deprived of its liberty and property without due process of law in contravention of the Fifth Amendment to the Constitution of the United States.

52.

Respondent excepts to the Board's denial of respondent's application for a continuance of said further hearing (Board's Exhibit 1-EEEEEE) and excepts to each and all the rulings and action of the Board contained and set forth in its order, Exhibit 1-GGGGG, denying said continuance for and upon each and all the reasons and grounds set forth in said application for continuance; and for like reasons excepts to the action of the Trial Examiner in proceeding with said further hearing in denial of the application.

53.

Respondent excepts to each and all the rulings and action of the Trial Examiner in the conduct of the former hearing herein, made over the objections or exceptions of Respondent or which are adverse to Respondent (as to which adverse rulings and action Respondent was allowed an automatic exception) for each and all the rea-

sons and grounds stated in the record, and for the further reason that the bias and prejudice of the Trial Examiner toward Respondent and its evidence permeated said rulings and action and because by virtue of said rulings and each of same the record is filled with incompetent, irrelevant and immaterial evidence upon which the Trial Examiner has based his findings, conclusions and recommendations, by virtue of all of which Respondent has been denied a fair trial.

54.

Respondent excepts to each and all the rulings and action of the Trial Examiner in the conduct of said former hearing herein for the reasons set forth in Respondent's Statement of Exceptions heretofore filed herein. To avoid incumbering the record by setting out at length herein said exceptions; and for the convenience of the Board the Court and all parties Respondent hereby adopts and makes a part of this its Statement of Exceptions each and all of the following numbered exceptions contained and set forth in its said Statement of Exceptions heretofore filed herein (which Statement of Exceptions appears in the record herein at pages 6310 to 6600 inclusive), to-wit, Exceptions Nos. 15 to 41 inclusive, Nos. 168 to 360 inclusive, and Nos. 366 to 368 inclusive and Nos. 371 to 378 inclusive; as fully as though said exceptions and each of them were herein set forth in haec verba.

[fol. 248]

55.

Respondent excepts to each and all the rulings and action of the Trial Examiner, James C. Batten, made or taken during said second or further hearing of this matter, of the objections or exceptions of Respondent or which are adverse to Respondent (as to which adverse rulings Respondent was allowed an automatic exception) for each and all the reasons and grounds stated in the record and for the further reason that the bias and prejudice of the Trial Examiner toward Respondent and its evidence permeated said rulings and because by virtue of said rulings and each of same the record is filled with incompetent, irrelevant and immaterial evidence upon which the Trial Examiner has based his findings, conclusions and recommendations and by virtue of all of which Respondent has been denied a fair trial.

Respondent excepts to the ruling, action and comment of the Trial Examiner in striking the testimony of the witness, Mrs. Reed, as set forth in the following excerpts from the transcript of the record, page 3212, to-wit:

"Q. (By Mr. Ingraham) You are referring to circulars he distributed to your customers?

"A. He had a circular made of the letter, copy of the letter he sent to me, he had that made and distributed to my employees, shortly after the letter came to me; I don't remember what date. I also know that he tried to put it in the newspaper and they wouldn't put it in.

"Mr. Langsdale: I ask that that be stricken out as hearsay.

"Trial Examiner Batten: It may be stricken."

[fol. 249]

Respondent excepts to the rulings, action and comment of the Trial Examiner as shown by the following excerpts from the transcript of the record, pages 3444, 3445, to-wit:

"Q. (By Miss Weyand) Then your answer would be she would decide for herself whether she wanted to follow the method given her by Mrs. Tyhurst, or given to her by someone else, or some other method that she wanted to follow, without regard to the fact that she had other instructions?

"A. I don't know what you are getting at.

"Trial Examiner Batten: I think what you are trying to get at, when that situation existed in the plant that you just described, that is, Mr. Baty was responsible for the entire production, the sewing section, and the instructions suggested one method and Mrs. Tyhurst should come through the section and suggest another, the operator then decided for herself which method she would use, is that correct?

"Miss Weyand: No, the question was—

"A. (Interrupting) Well, I don't know what you mean.

"Q. (By Miss Weyand) Even if that did not occur, would the operator be free to—

"Trial Examiner Batten: Miss Weyand, I don't understand it then, myself. I am afraid I'd better quit."

"Mr. Hogsett: May I make a general observation?"

We have sat here for hours, listening to hypothetical questions that are not predicated on any facts. In other words, Miss Weyand is working out questions with geometrical precision, and has spun out of that geometrical precision a psychological vacuum, and has predicated her questions on that theory of hypothetical assumptions; and I submit it doesn't get us any place. That technicality of interrogation, in character, is objectionable, and not founded upon anything that is known to exist, I submit.

"Trial Examiner Batten: Well, I don't believe I will sustain your objection. As I previously stated, Mrs. Reed is the president of the company, and thus far I have permitted, I think, somewhat more latitude with Mrs. Reed than I perhaps would have with other witnesses, in view of the fact she is the president of the company. I will permit Miss Weyand to proceed, but I want to be sure that the witness understands the question."

"So, Miss Weyand, will you proceed, please?"

[fol. 250]

58.

Respondent excepts to the rulings, action and comments of the Trial Examiner, appearing in the record at pages 3454, 3455, and 3456, as shown by the following excerpts therefrom, to-wit:

"Q. (By Miss Weyand) So Mrs. Tyhurst has the authority to speak for the company in saying the notch should be put in?

"A. When you talk about authority—

"Mr. Hogsett: (Interrupting) It seems to me that is carrying this question of authority to an absurdity. Now, a truck driver might be driving a truck, and another assistant on the truck might say, 'You have got a flat tire, you'd better stop.' Would anybody say the assistant had authority to speak for the company, because he ordered the truck to stop? In other words, we reach a point beyond all reason.

"Trial Examiner Batten: Of course, I think the important point is the statement which Miss Weyand made yesterday, I believe, along with other matters, what was actually done in this plant.

"Mr. Hogsett: I agree.

"Trial Examiner Batten: Now, it seems to me the way to show what was done would be in the daily and ordinary operation of this plant. Now, you might call a person a foreman, when he is not a foreman, and you might call him a superintendent when he is not a superintendent; I think that is, as far as I am concerned, and I think as far as the Board is concerned, with what actually took place in this plant at these various times.

"Now, it seems to me some of these questions Miss Weyand has asked are hypothetical, and it seems there is no showing here that many of these things, which have been asked Mrs. Reed and answered, have ever occurred.

"Mr. Hogsett: That is exactly the point.

"Trial Examiner Batten: But I will say again, I am not going to attempt to tell any of the attorneys how to ask their questions. Thus far, with Mrs. Reed, I feel I have been very lenient with all of counsel, and I intend to pursue that policy until we are through with this witness, because she is the president of the company, and unfortunately was unable to testify in the prior hearing.

"Now, on that basis, Miss Weyand, you may proceed. Now, what was the question?

"A. Mr. Batten, may I try to throw a little light on this thing we are doing?

"Trial Examiner Batten: I would suggest, Mrs. Reed, if you understood the question, that you answer the questions, and then I think we will get along.

"A. Well, I will make a note of something then, when I get back.

[fol. 251] "Trial Examiner Batten: I think when Miss Weyand gets through, if your counsel wants to clarify these points, he can ask you questions regarding them.

"I told you yesterday, when you get through with your testimony, if you want to make a statement, you may do so, the witness may do so."

"Mr. Hogsett: Well, it is just a matter of her making a note now."

"Mr. Reed: I submit if the witness wants, at this time, to make a statement to clarify any answer she has made, she has a right to do it."

"Trial Examiner Batten: There is a question pending and I would like to clear that up first."

59.

Respondent excepts to the rulings, action and comments of the Trial Examiner contained in the following excerpts from the transcript of the record, pages 3476 and 3485, to wit:

"Q. What was Ted Scoles's position in January of 1935?"

"Mr. Reed: That has been gone into, if Your Honor please, these identical questions."

"Trial Examiner Batten: I am sure I couldn't say, Senator. Will you answer the question, Mrs. Reed?"

"Q. Prior to 1942, what difference was there between Jack McCaughey's duties and his present duties?"

"A. Well, for—"

"Mr. Reed: (Interrupting) I submit that question has been answered and the details given in each instance. It has been asked what were his duties at a certain time, and what they were at another time. Now it is asked, to state the differences."

"Trial Examiner Batten: Well, the witness may state what the difference is, in her opinion."

"Mr. Reed: Well, I object to this interminable repetition."

"Trial Examiner Batten: She may tell us what she considers to be the difference."

Respondent excepts to the action of counsel for the National Labor Relations Board in introducing in evidence Board's Exhibit 32-E as a part of Board's Exhibit 32-A-B-C-D, and cross-examining the witness, Mrs. Reed with reference to said Exhibit 32-E as being a part of said Exhibit 32-A-B-C-D, and as being filed in the Wages and Hours Division on October 31, 1940 as a part of said Exhibit 32-A-B-C-D in the files of the Wages and Hours Division, when as a matter of fact said Exhibit 32-E had not been prepared on said date and was not filed in said Wages and Hours Division on October 31, 1940 and was never a part of said Exhibit 32-A-B-C-D in the Wages and Hours Division, but on the contrary the data in said Exhibit 32-E was assembled and related to a much later data and was not filed in the Wages and Hours Division until after December 29, 1940, and was never filed therein as a part of said Exhibit 32-A-B-C-D; and respondent excepts to the attempt of counsel for the Board by the use of said official document Exhibit 32-A-B-C-D having the apparent authenticity of a document signed by the respondent's Vice President and duly filed in the Wages and Hours Division and bearing its date stamp as having been received therein on October 31, 1940, and by attaching said Exhibit 32-E thereto as a part thereof, to mislead, confuse and entrap the witness Mrs. Reed and thereby obtained testimony that the matter set forth in said Exhibit 32-E existed on and before said date of October 31, 1940; and excepts to the examination by the Trial Examiner of said witness Mrs. Reed with reference thereto and to the Trial Examiner's [fol. 253] action in permitting counsel for the I.L.G.W.U. after the Trial Examiner had stricken said testimony, to further examine the witness with reference thereto by reading into the record portions of said stricken testimony; and excepts to each and all the rulings of the Trial Examiner with reference to said matter, all of which rulings and action of the Trial Examiner and said actions of counsel for the Board and for the I.L.G.W.U. were highly prejudicial to respondent and show the Trial Examiner's bias against respondent and his desire to acquit counsel for the Board of said improper examination, by reason of

all of which respondent has been denied a fair and impartial trial.

The matters herein referred to appear in the record at pages 3526 to 3535, 3550 to 3586, 3748 to 3750, 3847 to 3859, 3875 to 3881, 3910 to 3920, 3932 to 3940, and 3947 to 3952, inclusive.

[fol. 254]

61.

Respondent excepts to the rulings, action and comments of the Trial Examiner set forth in the transcript of the record at pages 3544, 3545 and 3546, as shown by the following excerpts therefrom, to wit:

"Q. (By Miss Weyand) Do you know what was the largest number of girls you ever employed in St. Joseph at one time?

"A. I do not.

"Q. Do you have any idea?

"A. Not any very definite idea.

"Q. Could you give us an approximation?

"A. I really couldn't.

"Mr. Hogsett. If it please the Examiner, I object as wholly pointless. We have again run into a line of questions that haven't any bearing on this case at all. It might be of interest if someone were writing a history of the Donnelly Garment Company, but it hasn't anything to do with whether this company dominated, sponsored, or coerced the formation of the employees' union, which is the issue here to try. It is far afield.

"Miss Weyand. I do not intend to pursue this line of questioning further.

"Mr. Hogsett. She always says that, and then—

"Trial Examiner Batten: In view of Miss Weyand's statement that she does not intend to pursue it any further—

"Mr. Hogsett. —there is nothing you can do about it.

"Trial Examiner Batten. —that will dispose of the matter. . . .

"I didn't assume, Miss Weyand, that when you said you didn't intend to pursue that further, you were precluded

from asking any further questions if, in your opinion, it was necessary."

Respondent further excepts to the action of the Trial Examiner in permitting counsel for the Board to examine and cross-examine witnesses at great length upon immaterial, incompetent and irrelevant matters, and when objection is made, permitting said testimony to stand as a result of counsel's statement that she does not intend to pursue the line of questioning further, or the statement [fol. 255] that the questions asked are preliminary, or the statements that the questions are asked for the purpose of testing the witness' credibility, as a result of which the record is filled with incompetent, irrelevant and immaterial evidence which has improperly influenced the Trial Examiner's findings and conclusions adverse to respondent.

62.

Respondent excepts to the rulings, action and comments of the Trial Examiner as shown by the following excerpts from the transcript of the record, pages 3591, 3598, to wit:

"Q. Do your employees have credits for the purpose of purchasing dresses in your retail store, is that a cash transaction?

"Mr. Hogsett: I can't see the remotest connection between that. I really have no objection, but I can't see it is at all relevant. I object to it; to save time.

"Trial Examiner Batten: You may tell us. . . .

"Q. Could you indicate what factors in her experience impressed you with her qualifications for being an instructor?

"Mr. Reed: I think that is a ridiculous waste of time.

"Trial Examiner Batten: Is that an objection, Senator?

"Mr. Reed: I object. It is a ridiculous waste of time."

Respondent further excepts to the failure of the Trial Examiner to instruct and require counsel for the Board to desist from such questioning upon utterly immaterial and irrelevant matters whereby the record is encumbered therewith and the true issues obscured and the Trial Ex-

aminer's findings and conclusions influenced by immaterial, incompetent and irrelevant evidence, all to respondent's prejudice.

[fol. 256]

63.

Respondent excepts to the comments of the Trial Examiner as set forth in the following excerpts from the transcript of the record, page 3606, as showing the bias and prejudice of the Trial Examiner towards respondent and its witnesses and his endeavor to get the witness to make a statement contrary to the facts:

"Q. Turning now to April 1937 was Rose Todd assigned to any department of the plant?

"A. I testified about three times that she went through the plant supplying notions of thread, or whatever supplies might be missing to complete cuts.

"Trial Examiner Batten: Mrs. Reed, the question is, was she assigned to any department? Was she assigned to any definite department or section in April of 1937?

"The Witness: No, her job was just to go through the plant from one section to another.

"Trial Examiner Batten: In other words, she was not a part of any sewing section or department of the plant or the business; is that right?

"The Witness: She was a part of all of them. She simply went from one place to another, and when there was something missing, she would find out what it was, and then she would go to the notions department, if it was to get more thread, or—"

64.

Respondent excepts to the rulings, action and comments of the Trial Examiner with reference to Board's Exhibit No. 28, (being purported copies of certain pay rolls of respondent, which copies were prepared by the Board), as shown by the transcript of the record, pages 3612 to 3635 inclusive, pages 3688, 3689; for the reason that such record shows the bias and prejudice of the Trial Examiner toward respondent and its counsel and his evident desire to make use of error or mistakes of the Board in copying exhibits furnished by respondent to the Board because such record

shows the Trial Examiner's fixed purpose to refuse to take said erroneous record as true and not accept testimony of [fol. 257] the witness, Mrs. Reed, that same was incorrect, although the error therein was plainly pointed out by both counsel for the respondent and by said witness Mrs. Reed, and shows the evident purpose and intention of the Trial Examiner to enlarge the terms of the stipulation with reference to said Exhibit 28 in a manner unfavorable to respondent, casting the entire burden upon respondent's counsel for the correctness of said exhibit when the error was wholly that of the Board in copying same, and in representing to respondent's counsel that same was a true copy and thus obtaining the signature of respondent's counsel to said stipulation, by reason of all of which the bias and prejudice of the Trial Examiner against respondent and its evidence is shown and the non-judicial attitude of the Trial Examiner is shown by his refusal to permit correction by the witness of palpable errors in evidence caused by the Board and the correction of which would result in favorable inferences to respondent and the non-correction of which might be used for the purpose of drawing unfavorable inferences against respondent.

In connection with the foregoing exception, respondent calls particular attention to the following excerpts from the transcript of the record, to wit:

"A. I don't find it.

"I would like to call the Examiner's attention to the fact that I was puzzled about this pay roll list yesterday, and last night I looked up to see why these queer headings would be on certain pages, and I saw the original pay roll that was put in evidence, and apparently when this was copied the pages were not followed. Now, when--

"Q. (By Trial Examiner Batten) Well, do you have the original pay roll? * * * (p. 3613)

[fol. 258] "Mr. Ingraham: We brought in the original pay rolls.

"Trial Examiner Batten: And wasn't this supposed to be a copy of it?

"Mr. Ingraham: Yes. I do not have any recollection of making a copy of those pay rolls. We brought the original pay rolls in.

"Trial Examiner Batten: Whoever made them, they were marked as an exhibit and were received on the assumption that they were a copy of the pay roll. Now, are they a copy or aren't they, Mr. Ingraham?

"Mr. Ingraham: They are a copy, as far as the names and wages are concerned.

"I think this is what actually happened: I was asked by the Board's counsel to produce the pay rolls for their inspection, and I brought up the pay rolls, including the ones for the particular exhibits that you were inquiring about yesterday, and the Board took those pay rolls—

"The Witness: The pages were mixed.

"Trial Examiner Batten: Do you mean the Board inserted these titles?

"Mr. Ingraham: No. But the pages got mixed up.

"The Witness: A title would be carried over to the next page, and the wrong page would be there.

"Trial Examiner Batten: I would suggest that the original pay rolls be marked and photostats be provided.

"Mr. Langsdale: If the Examiner please, I object to that change from the record as it now exists, until we look at the record and see what actually happened. . . . (pp. 3613, 3614)

"Mr. Ingraham: I was asked to produce these pay roll records, and I did produce them, and the next thing that appears is this stipulation.

"Trial Examiner Batten: Mr. Ingraham, you signed the stipulation, didn't you?

"Mr. Ingraham: Yes.

"Trial Examiner Batten: Then, it seems to me, if there is anything wrong with it, it is up to you folks to check it up—

"Mr. Ingraham: We will produce the pay roll records.

"Mr. Langsdale: I don't agree with that. I want to rely upon what they did produce in 1939.

"Trial Examiner Batten: You may rely completely, Mr. Langsdale, upon what is in the record, unless it is changed. Unless what is now in the record is corrected, it will remain, and any counsel may use it. * * * (p. 3615)

[fol. 259] "Mr. Ingraham: That's true, Miss Weyand, and the Board, as I recall, never challenged the division of the people in the pay roll, there never was any question raised.

"Trial Examiner Batten: Well, we will proceed on the assumption it is correct, until otherwise shown. * * * (p. 3631, 3632)

"Mr. Ingraham: Mr. Langsdale, we produced the record the last time; that the Labor Board asked for, and I brought them in, and I have a receipt in my pocket.

"Trial Examiner Batten: Well, now, just a minute. I just said we are going to proceed on the basis this record is correct. Now, if the parties who contend it is not, may or may not have an opportunity to present it in this hearing, I am not going back, I don't think, now, on this record, and revise it from page 1 up to 3200, whatever it is, including all of the numerous exhibits. (pp. 3632, 3633)

"Mr. Langsdale: My point is this, Mr. Examiner; if there is going to be any contention that the records they bring in here are the originals, I think it would be well to send someone representing the National Labor Relations Board down there this afternoon to see where they get them and how they get them and whether or not these are people who have been there any length of time.

"Trial Examiner Batten: I don't think so, Mr. Langsdale, because I think the burden is entirely on Mr. Ingraham's shoulders. He signed this stipulation and agreed to this. It is in the record and has been used since—what is it now? —since July, 1939.

"If it isn't correct, I think the burden is on [your], Mr. Ingraham, to produce whatever is necessary to show that it is correct. You agreed to the stipulation."

"Mr. Ingraham: I agreed to the stipulation but—

"Trial Examiner Batten: Now, on that basis, as I said awhile ago, we are going to proceed on the assumption that this is correct.

"Mr. Langsdale: I say, if they are going to come in later with a lot of—

"The Witness: I didn't say this was incorrect. I said it was incorrect in the way it is put together. Sometimes the heading is carried over and sometimes refers to the employees on the next page, when it shouldn't. (p. 3634)

"Mr. Ingraham: I didn't make up this exhibit. I produced the pay rolls and Mr. Leary took the pay rolls and checked them.

"Trial Examiner Batten: Whether you prepared them or not, you were the attorney who signed the stipulation.

"Mr. Ingraham: Yes. The Board had these pay rolls before them—

"Trial Examiner Batten: Therefore, you must assume the responsibility of entering into the stipulation.

"The Witness: We didn't know the Board would do a thing like that until this morning.

"Trial Examiner Batten: If you find it is incorrect, check it up and— The burden is on you. (p. 3635) * * *

[fol. 260] "Trial Examiner Batten: Miss Weyand, I said we will proceed on the assumption that it is correct. It is in the record, and it was stipulated, and unless some action is taken by one of the parties to make a motion or take some step to correct it, we will proceed on the assumption that the record is correct. (p. 3688) * * *

"Trial Examiner Batten: I am not going to initiate any action to change the record. The record stands. It has gone through the hearing, has gone through the Board, and it has gone through the Court, and as far as I am concerned, I will accept the record as it is." (p. 3689).

Respondent excepts to the ruling and action of the Trial Examiner as shown by the following excerpt from the

transcript of the record, page 3652, for the reason, among others, that same shows the purpose of the Trial Examiner to have elicited immaterial, irrelevant and incompetent evidence and then to base findings against respondent thereon:

"Q. Did you ever hear of a Twilight Club, prior to reading that today?"

"A. I did not.

"Mr. Hogsett: What possible difference would it make if she did or did not? I object; it is immaterial.

"Trial Examiner Batten: I overrule the objection; the answer is necessary."

66.

Respondent excepts to the rulings, action and comments of the Trial Examiner appearing at pages 3656 to 3658 inclusive and to the following excerpts therefrom, to wit:

"A. I don't call to mind in a definite way a pin. I have heard discussions of a Loyalty pin, or a pin with the name Loyalty on it, but I don't remember that it was ever brought to my particular attention.

"Q. Was such a pin sold to employees around the plant?"

"A. No to my knowledge.

"Mr. Hogsett: If the Examiner please, I object to this line of questioning as being wholly immaterial, and not having the remotest infinitesimal value, whether proving the Donnelly Garment Company dominated a garment union. It has not even a faint tendency to prove that. We [fol. 261] are all sitting here, wasting the time of the government, and every individual in this room, to no purpose at all, listening to such examination.

"I know that your Honor, and I think I might say that it is commendable—I know that you have been liberal in the examination in chief and in cross of this witness, for the reason, I think, that was commendable and a proper thing to do; but there must be a limit. * * *

"Trial Examiner Batten: * * * Well, I am going to pursue the same policy I have consistently followed, un-

less I feel that it is entirely beyond any matter which we covered in the original hearing, and there was a great deal of testimony in the first hearing concerning the Donnelly Loyalty League. I will permit you to continue, Miss Weyand."

Respondent further excepts to said ruling for the reason that the failure of the Trial Examiner to exclude said immaterial and irrelevant evidence encumbers the record therewith and obscures the real issues involved and has contributed to the erroneous findings of the Trial Examiner against respondent.

67.

Respondent excepts to the refusal of the Trial Examiner to exclude testimony as to whether respondent ever issued instructions to the instructors directing them to maintain a neutral attitude in labor matters, and to the Trial Examiner's interposing and asking questions to elicit said testimony over the objection of the respondent as same appears at page 3678 of the transcript of the record, for the reason that said testimony is incompetent, irrelevant and immaterial to any issue in this case and said action of the Trial Examiner shows his prejudice against respondent and his prejudgment of the charges against respondent, and because same incompetent, irrelevant and immaterial evidence contributed to the erroneous findings and conclusions of the Trial Examiner herein.

[fol. 262]

68.

Respondent excepts to the comments of the Trial Examiner set forth on pages 3680, 3681 of the transcript of the record which show the prejudice of the Trial Examiner against respondent and its witnesses. The following are excerpts from said comments:

"Q. - Were the employees present there at the meeting wearing uniforms?

"A. A number of them were. I don't remember specifically how they were dressed. My plant employees do wear white uniforms.

"Q. (By Trial Examiner Batten) You thought some of them were wearing uniforms?

"A. If this hadn't come to my attention, I don't think I would have thought about it. I didn't think about it.

"Q. Is that your recollection?

"A. I don't remember.

"Q. Then, Mrs. Reed, when you are asked these questions and you don't remember, say you don't remember:

"A. The first thing I was thinking of, naturally, Mr. Batten, my plant employees do wear white uniforms, and, it being time to go home in the evening, some of them may have changed or they may not.

"At the time I wasn't thinking how they were dressed, so I don't remember whether they were wearing uniforms or not.

"Q. I would suggest that you give some thought to these questions, because after all that is the reason you are here, to answer these questions.

"A. I have been on the stand about five hours, and I am tired.

"Q. Irrespective of that, I would suggest that you give thought to these questions, and take your time.

"A. All right. Thank you.

"Q. And don't proceed to make an answer, and then make the statement later that you don't remember. I would think about the question first.

"A. Well, thank you very much."

69.

[fol. 263] Respondent excepts to the rulings, action and comments of the Trial Examiner appearing at pages 2690-91 of the transcript of the record as follows, to wit: {

"Q. (By Miss Weyand) Is the door to your office one that leads into an outer reception office, or is it directly connected with the main part of the building?

"Mr. Reed: Now, Mr. Examiner, I have to object. This is a mere consumption of time. What difference does it make where her office door leads, or how many minutes it is open during a period of six or seven years? I can't see the reason for questions of this character."

Trial Examiner Batten: Well, Senator, as I have indicated before, I am not going to attempt to limit the examination at this point in any way. Whether it is material or not, I presume will appear. I don't suppose I can ask any of counsel on preliminary or introductory questions just the purpose.

I will permit you to proceed, Miss Weyand."

70.

Respondent excepts to the repeated interposition of the Trial Examiner in the examination of witnesses and to his rulings, action and comments as set forth in the following excerpts from the transcript of the record (pp. 3695-96 and pp. 3703-04), to wit:

"Trial Examiner Batten: The question was, Mrs. Reed, did you make any investigation of it yourself after Mr. Baty reported the incident to you?

A. After the incident was reported to me I made no further investigation.

Q. (By Miss Weyand) Did you give any directions that the girls should be contacted and assured protection to remain in the plant and work?

A. Mr. Baty was in charge of the plant, and I didn't feel that it was necessary for me to go into that incident at all.

Trial Examiner Batten: The question is, Mrs. Reed, did you? Did you do anything about it?

[fol. 264] "The Witness: But I say I didn't feel any reason for it.

Trial Examiner Batten: Let's assume that you felt that way, did you do anything about it?

The Witness. I did not."

71.

Respondent excepts to the rules, action and comments of the Trial Examiner as shown from the following excerpts from the transcript of the record (pp. 3743-44), to-wit:

"Q. (By Miss Weyand) Did the Donnelly Garment Workers' Union give the company a written notice that it desired the company to discharge these two girls?

A. That is my remembrance.

Mr. Reed. Wait a minute. We object to that. That is opening up exactly the question the Commissioner has ruled out.

Trial Examiner Batten: I didn't rule it out, Senator.

Mr. Reed: If you didn't rule it out—

Trial Examiner Batten: I have been trying to arrive at some sort of a limitation. I said we will proceed with Mrs. Reed. I do not intend, Senator, as I previously stated, to attempt to limit the matter at this time. When Mrs. Reed is through, I am more than convinced we have to work out some sort of a limitation on this thing.

Mr. Reed: This is something we didn't go into at all. It raises the question, if it raises anything, whether or not these girls were properly discharged.

Miss Weyand: The company did go into the resignation of various persons, Jack McConaughy and Lyle Jeter, that happened in 1939, 1940, and 1941.

Mr. Reed: If the company went into the question of Jack McConaughy and somebody else who resigned from the union, that has nothing to do with the discharge of these two girls. There is no connection between them.

Trial Examiner Batten: Read the question please.

(Thereupon the last question was read by the reporter as follows:

[fol. 265) 'Did the Donnelly Garment Workers' Union give the company a written notice that it desired the company to discharge these two girls?')

Trial Examiner Batten: You may tell us. Do you know whether you received a written notice, "Mrs. Reed?"

Respondent excepts to the rulings, action and comments of the Trial Examiner as set forth from the following excerpts from the transcript of the record (p. 3765), to wit:

"Mr. Langsdale: I would like to ask one more question.

Q. (By Mr. Langsdale.) 'Then, that group of people are taken up with Mr. Atchison, and Mr. Atchison discusses with them very thoroughly, he sees what they have made and he knows the reason that happened, he has listed each week on pay roll cards with the instructor, and Mrs. Wheery', was that true?

Mr. Reed: I insist, if your honor please, this witness ought to be asked direct questions, and not have things read.

Trial Examiner Batten: The question is not whether Mrs. Reeves' testimony is true, but was that the true situation in the plant at the time, if this witness knows.

Mr. Reed: I object to that method of examination.

Trial Examiner Batten: I will overrule the objection.

Mr. Reed: As incompetent, and immaterial.

Trial Examiner Batten: Do you know if that was the method?"

73.

Respondent excepts to the rulings, action and comments of the Trial Examiner throughout the hearing in permitting testimony and evidence to be introduced concerning matters which occurred prior to the passage of the National Labor Relations Act for the reason that said evidence is immaterial, irrelevant and incompetent, and for the further reason that same has contributed to the erroneous findings and conclusions of the Trial Examiner, and in [fol. 266] connection with this exception respondent calls attention to the testimony at pages 3760-3784 and to the ruling of the Trial Examiner concerning same as shown in the following excerpt from pages 3775-76, to wit:

"Q. And Mrs. Reeves was your production manager at that time, was she not?

A. Yes.

Q. And reading further from the same testimony—

Mr. Reed: (Interrupting) Just for the record, we object to the testimony with reference to what happened in 1935

and prior thereto, as entirely remote. It does not throw any light, it does not furnish a background for this case.

Trial Examiner Batten: Well, you may have a continuing objection to each question.

Mr. Reed: All right.

Trial Examiner Batten: That is, with respect to the 1935 situation.

Mr. Reed: I just think it is cumbering the record.

Trial Examiner Batten: You may proceed."

74.

Respondent excepts to the rulings, action and comments of the Trial Examiner set forth in the following excerpts from the transcript of the record pages 3825-26, to wit:

Q. Would you have approved of her going around and getting these petitions signed and taking a whole day?

Mr. Reed: We object to that. That is purely a hypothetical question.

Trial Examiner Batten: She may tell us whether she would have approved.

Mr. Reed: Approved something that never took place?

Trial Examiner Batten: Whether she would have approved of Mrs. Shartzer's going around and spending a day getting a petition signed.

Mr. Reed: There is no evidence that she took a day.

[fol. 267] "Mr. Langsdale: I am going to assume it would have taken a day to get 1,000 names signed.

Q. (By Mr. Langsdale) On that assumption, would you have approved of that?

Mr. Reed: How can she talk on an assumption made for the first time by Mr. Langsdale in this courtroom? I [objection] to the question.

Trial Examiner Batten: Objection overruled.

You may proceed.

A. I know we had week workers that would go out and have their hair done and—

Mr. Langsdale: You said that before.

A. (Continuing) —and take two or three hours to do it, and —

Trial Examiner Batten: Mrs. Reed, the question is, would you have approved this young lady's —I have forgotten her name — spending a day getting a petition signed in the plant?"

75.

Respondent excepts to the rulings, action and comments of the Trial Examiner as set forth in the following excerpts from the transcript of the record (pp. 3863-64), to-wit:

"Q. (By Mr. Langsdale) I asked you if you have any information that Lena Tyhurst was not in the position that she is described as here in the handwriting of Lee Baty on June 1, 1937?

A. Mr. Langsdale, I have said over and over and over again here that while Mrs. Reeves and Mr. Baty were managing the factory I had no knowledge of my own of the details of how they did it and what they called the people who are in the plant.

Trial Examiner Batten: Read the question, please.

(Thereupon the last question was read by the reporter).

Mr. Reed: That is calling for hearsay evidence. Whether you have heard something about it, that doesn't make evidence.

Trial Examiner Batten: Do you understand the question, Mrs. Reed?

The Witness: I have said over and over and over again—

Trial Examiner Batten: Just a moment, Mrs. Reed. Do you understand the question?

The Witness: Will you read the question again?

[fol. 268] "Trial Examiner Batten: The question is this: Do you have any information that Lena Tyhurst was not

assistant factory manager on this date as described on this document by Mr. Baty?"

76.

Respondent excepts to the action of the Trial Examiner in repeatedly interposing in the examining of witnesses, an illustration of which appears in the excerpts from the transcript of the record hereinafter quoted from pages 3888-3889, and Respondent excepts to said testimony so elicited by the Trial Examiner for the reason that same relates to a period prior to the passage of the National Labor Relations Act, and for the further reason that said evidence contributed to the erroneous findings and conclusions of the Trial Examiner: As a part of this exception Respondent calls attention to the following excerpts from the testimony (pp. 3888-3890), to-wit:

"Q. (By Trial Examiner Batten) Well, I thought this morning, in that old N.R.A. record,—wasn't he one of the four that were mentioned as passing upon the people?"

A. I am saying they would get his opinion and— The reason they would get his opinion, Mr. Batten, was to see how much—if we had a lot of double-stitching to do, he would be the one to know it and—

Q. Irrespective of what they got his opinion on, he was one of the four, was he not, Mrs. Reed?

A. But his opinion was always on the work.

Q. Whatever his opinion was on, he was one of the four mentioned by Mrs. Reeves, wasn't he, when she said they always got the opinion of these four people before they did anything?

A. That is right. But I am trying to say, Mr. Batten, the reason his opinion would be worth something was because of his knowledge of how much of a specific kind of work we had to get through and how many machines we had to do it with, and from that point of view.

Q. Well, of course, I didn't ask you why he is there.

A. I think you ought to let me explain.

[fol. 269] "Q. Mrs. Reed, I have no objection to your explaining. My only question to you was, was he one of the four mentioned this morning?"

A. But it seems to me you ought to let me explain. It wasn't that he had personal control over the woman who was on the job, but he could tell us how much work we had

of a certain type that this woman could do. We didn't lay off any double-stitchers if we had—

Q. Mrs. Reed, I think you have explained that several times.

A. But it comes back all of the time, Mr. Batten, and it would seem that Dewey had control of managing the plant.

Q. No, we are not interested in managing the plant. We are interested in what these people did.

A. I am trying to explain it to you.

Q. Well, Mrs. Reed, you have already explained it several times. In fact, I think it was explained to Mr. Ingraham on direct examination and to Miss Weyand on cross-examination.

A. Well, Mr. Langsdale seems to want to know about it again.

Mr. Langsdale: I just don't want you to be confused about it, Mrs. Reed.

The Witness: I am not confused about Dewey. You are the one that is confused about Dewey.

Q. (By Mr. Langsdale) Didn't Mrs. Reeves testify:

'Nobody is let out of the Donnelly Garment Company unless four people pass on it.'

Would you say that is true?

A. That was my general knowledge.

Q. Would you say this is true?

'Then that group of people are taken up with Mr. Atchison and Mr. Atchison discusses them very thoroughly and he sees what they have made and he knows the reasons about what happened each week because he analyzes each week our pay roll cards with the instructor and Mrs. Wheery.'?

A. That wasn't my testimony, was it, Mr. Langsdale?

Q. I asked you if that was true. That was Mrs. Reeves' testimony."

Respondent excepts to the rulings, action and comments of the Trial Examiner as set forth in the following excerpts

[fol. 270] from the transcript of the record (pp. 3968-69), to-wit:

"Q. (By Mr. Langsdale) Did you make any order at all with reference to the use of the i. d. m. system by the Donnelly Garment Workers' representatives?

Mr. Reed: I object to that as immaterial. The evidence so far, if it shows anything about this, is that this information, if it ever was received, came during the trial of these cases. If so, it is long subsequent to the charge that is filed here. If after this case was started or after this case was tried or while it was being tried the witness heard something in the trial, it is immaterial whether she went to investigate to find out whether it was going on or not.

Mr. Langsdale: I am past that. I am asking her now if she made any order with reference to the use of the i. d. m. system by the Donnelly Garment Workers' representatives.

Mr. Reed: If it was an order, it was the same thing.

Trial Examiner Batten: At what time?

Mr. Langsdale: At any time after she learned it was charged that they were using the i. d. m. system to pass information among the employees connected with that union.

Q. (By Trial Examiner Batten) Mrs. Reed, you have stated you did not make any investigation of it. Did you take any action with respect to it?

A. I never made any orders—

Mr. Reed: I make the same objection to the Examiner's question that I made to Mr. Langsdale's.

Trial Examiner Batten: I will overrule the objection.

Q. (By Trial Examiner Batten) Did you take any action on that?"

78:

Respondent excepts to the rulings, action and comments of the Trial Examiner as shown by the following excerpts from the transcript of the record (pp. 3983-84), to-wit:

"Q. (By Mr. Langsdale) While you were reading articles in the newspapers about the I.L.G.W.U., let me ask you if you read this article in the magazine 'Life', August 1st, 1938."

• • • •

Mr. Ingraham: Yes. We object to this kind of an inquiry. This purports to be an article concerning the recreational activities of the I.L.G.W.U. I don't know what the purpose of it would be in this hearing.

[fol. 271] "Trial Examiner Batten: Well, I don't either. I think the question to Mrs. Reed is, did she read this article or see it. Now, I will permit her to answer that question."

79.

Respondent excepts to the rulings and action of the Trial Examiner in directing the order of proof herein by requiring Respondent to proceed first with employee witnesses and by confining their testimony strictly to the offers of proof by "the 1200 employees", and in refusing to receive testimony under other offers of proof made by Respondent, and in denying to Respondent the right to put on its proof in the order it desires (when there was no reason such as the convenience of a witness involved which might call for the Trial Examiner's discretion in receiving particular evidence first), and in refusing to permit witnesses, while on the stand, to testify to matters which the Trial Examiner did not consider came within his strict construction of said "employee" offers of proof, and in refusing to receive pertinent and material testimony from said witnesses and other witnesses for respondent bearing on the question "how and why" the DGWU was formed and on whether there was any coercion, interference or support on the part of Respondent in connection with the formation of said union.

These rulings and action and Respondent's objections and exceptions thereto made at the time appear in the transcript of the record at pages 4049 to 4096 inclusive.

In connection with this exception, Respondent calls attention to the following excerpts from the transcript of

the record and excepts to each and all of said rulings and comments of the Trial Examiner, to-wit:

[fol. 272] "Trial Examiner Batten: I say to you, is this an introductory question opening up the question of violence through this witness?

Mr. Ingraham: We made an offer of proof by the employees on the facts involved in the so-called strikes at 26th and Grand, and I was briefly going to inquire of Miss Tobin who had charge of the strikes up there and if it was the I. L. G. W. U. and what went on." (pp. 4051-52)

.....

"Mr. Ingraham: I think that we have a right to show by this witness what the facts were up there, so that—

✓ Trial Examiner Batten: As to violence, yes.

Mr. Ingraham: —so that there will not be any question but what this violence did occur.

Trial Examiner Batten: Then, I will say I am going to rule that it is immaterial, to this extent: I am now going to direct the order of proof to this extent, I am going to direct that we first receive the testimony of the 1,200 witnesses, if they testify to material evidence that was ordered by the court, in accordance with the order of the court remanding the case.

.....

"I am going to direct that order of proof at this time.

.....

Now, I am going to spend the rest of the afternoon listening to any argument which counsel have on my ruling that we will proceed with the 1,200 witnesses, as the court stated that testimony should be received. . . . (pp. 4052-53).

"Mr. Ingraham: Before Miss Tobin is excused, and before making any offer of proof, I have just one other question.

Trial Examiner Batten: Well, she has not answered the last one, has she?

Mr. Ingraham: No. I understood you to state that you were going to have us make an offer of proof.

Trial Examiner Batten: Yes, I want an offer of proof on that, as far as this witness is concerned; not a general offer of proof, Mr. Ingraham.

Mr. Ingraham: Yes.

Q. (By Mr. Ingraham) Miss Tobin, who is the chair-lady at the Marguerite Keyes shop at the present time? (p. 4054)

.....

[fol. 273] "Mr. Ingraham: May the witness answer the question I have just asked, so that we can go ahead and present any argument we have on this legal point?

Trial Examiner Batten: I prefer that you present your arguments now, Mr. Ingraham. That was my request.

Mr. Reed: I want to say first, that the order of proof in a case is in the hands of the counsel who proffer the proof. If they do it in an improper way, it is then for a court or an examiner to rule on the evidence as it is offered. But no court has the authority to tell counsel the order in which they shall introduce proof. I don't think I am mistaken about that.

So, I say we propose to exercise our right to offer our proof in the manner which seems to us is best and proper. If the Examiner sees fit to exclude it, we can only save our exception at that time.

Now, in regard to this witness, you have stated that you did not propose to make any rule or follow any rule with regard to who brought in a witness—that you might bring in a witness and you might ask them questions like you would on cross-examination—

Trial Examiner Batten: If they become adverse to you, Senator.

Mr. Reed: Yes. Now, we have the right to show the interest of this witness. That is what we are trying to show, her employment for a number of years by the pros-

executing force in this hearing. We have the right to show her interest and to show that by her acts. And if we had no other ground than that, we have the right to ask this question and to have it answered now, and not two weeks from now, or some other time when we may reach it.

I insist we have the right to ask this lady if she was here when those strikes occurred and to ask her if she did not take part in them, and to ask her if she did not have direction of the violence that took place, and to show her photograph here—her picture in the pictures that display the riotous conduct of these strikers. That for the purpose of showing her interest, if nothing else.

Then, this evidence is competent for another reason. Of course, it cannot be that in a strike of this kind, violence of this kind, where there were hundreds and perhaps thousands of people concerned—we could not be expected to show by every one of the witnesses that we may put on here that they saw the strike. Some of them saw parts of it. But if we offer the person that was conducting the strike, who knows all about it, and prove the fact that the strike took place and the kind of strike it was, that it was given publicity through the papers and the employees hear of it and know it—the air is full of it, the air is full of danger for them, and that is a reason why they would want to organize a union of their own, to be protected against this violence, that is clearly within the decision of the Circuit Court of Appeals.

[fol. 274] "Now, here is what they said: —Mr. Hogsett called attention to it very graphically.

'At the hearing before the Trial Examiner, the petitioners proffered the evidence of the employees of the Donnelly Company, some 1200 in number, to show how and why they formed the Donnelly Garment Workers' Union, to show that no influence was brought to bear upon them by the employer either in the formation or administration of the union, to show how and why they organized the union.'

One of the whys is that this riotous conduct was going on, these brutal abuses were being visited upon girls going to work, that the threats had been made that the same

thing would be done to the Donnelly Garment workers, so that they were intimidated into riding there in busses or riding there in streetcars, all of that forms a part of this picture.

The only question, then, is, was the violence here? Not what reasons they had for it. We do not have to go into that. But was the violence here? Was the danger here? Was the threat here? Those things we have the right to go into.

Now, here is the lady who conducted the strike. We want to ask her a few brief questions about it.

Now, if Your Honor undertakes to take this case out of the hands of the attorneys and tell us how we shall introduce our evidence and the order of it, all I can say is that we will have to do as we did before, save our exceptions." (pp. 4056-57-58-59).

"Mr. Ingraham: Won't you let us finish with the question that is asked this witness?" (p. 4060).

"Trial Examiner Batten: I think we are ready to proceed. In line with my suggestion when we adjourned I went along the matter of the order of proof in the hearing, and with respect to the procedure which we will follow.

First, I am going to receive the testimony of the employees referred to in the Circuit Court's decision, and on that basis we are ready to proceed.

Mr. Langedale: Mr. Examiner, may I ask you what you mean by 'in accordance with the Circuit Court's decision'? In other words, do I understand you to mean that you will receive the testimony of the employees that was offered?

Trial Examiner Batten: That's right. In accordance with the offers of proof.

Mr. Langedale: And that doesn't mean then the same employees can go over the same matters that they did go over at the hearing?

[fol. 275] "Trial Examiner Batten: Well, I don't intend to cover all the matters covered in the prior hearing, Mr. Langsdale. I intend to accept first the testimony of the employees referred to in the Circuit Court's decision in the offers of proof which I rejected. Now, that doesn't mean I am limiting the hearing to that. (p. 4077)

"Mr. Reed: I confess I am not sure that I comprehend the ruling. Your Honor states that you will receive testimony of the employees on the matters that were referred to in the offers of proof. Do we understand that is all the testimony you are going to permit?

Trial Examiner Batten: No, I think I stated that is the testimony which I intend to receive first, Senator. In other words, I believe the Circuit Court, in that one matter at least, was specific, and they said I should receive the testimony of the 1200 employees in accordance with the offers of proof. Now, that much of the decision is definite, and I think in line with the Court's decision, that is the testimony which I should receive first, and accordingly I am directing that order of proof." (p. 4078)

"Mr. Reed: We are in the middle of the examination of Wave Tobin. We insist respectfully that we are entitled to proceed with that witness, and I call attention to the Examiner's ruling, which, as I understand it, is that he proposes now to regulate the order of proof, and to direct the Respondent how they shall put in their case. That, we think, deprives us of our right under the law, and that is bad practice in any event." (pp. 4078-79).

"Mr. Reed: * * * Now, we insist and we propose, on our part—of course, we cannot do it if the Examiner refuses—to go on with the examination of Miss Tobin, and when we ask questions that are outside the issues of this case, the proper objections can be made, but we are not required to tell counsel what we intend to prove by this witness.

Trial Examiner Batten: I think I stated the last day we met, Senator, that I did not intend to require it, as far as Miss Tobin was concerned.